

**NOMINATIONS OF ERROL R. ARTHUR,
KENDRA D. BRIGGS, AND
CARL EZEKIEL ROSS**

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

NOMINATIONS OF ERROL R. ARTHUR,
KENDRA D. BRIGGS, AND CARL EZEKIEL ROSS TO
BE ASSOCIATE JUDGES, SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

JULY 12, 2022

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CONTENTS

Opening statements:	Page
Senator Peters	1
Senator Portman	2
Senator Hawley	13
Senator Carper	16
Prepared statements:	
Senator Peters	21
Senator Portman	22

WITNESSES

TUESDAY, JULY 12, 2022

Hon. Eleanor Holmes Norton, a U.S. Representative from the District of Columbia	2
Kendra D. Briggs to be Associate Judge, Superior Court of the District of Columbia	
Testimony	4
Prepared statement	24
Biographical and professional information	25
Responses to post-hearing questions	44
Errol R. Arthur to be Associate Judge, Superior Court of the District of Columbia	
Testimony	5
Prepared statement	51
Biographical and professional information	52
Responses to post-hearing questions	74
Carl Ezekiel Ross to be Associate Judge, Superior Court of the District of Columbia	
Testimony	6
Prepared statement	83
Biographical and professional information	84
Responses to post-hearing questions	105

**NOMINATIONS OF ERROL R. ARTHUR,
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TUESDAY, JULY 12, 2022

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Gary Peters, Chairman of the Committee, presiding.

Present: Senators Peters, Carper, Hassan, Ossoff, Portman, Scott, and Hawley.

OPENING STATEMENT OF CHAIRMAN PETERS¹

Chairman PETERS. The Committee will come to order.

Today we are considering three nominations, Kendra Briggs, Errol Arthur, and Carl Ross to be Associate Judges (AJ) on the Superior Court of the District of Columbia. Welcome to each of our nominees and to your family members who are joining us here today. We want to thank all of you for your previous public service and your willingness to serve in this very important role.

The D.C. Superior Court, which operates as the State-level trial court in the nation's capital, has one of the highest per capita rates of cases filed. According to the National Center for State Courts (NCSC), 83,000 new cases are filed across its five divisions each and every year. Unfortunately, the D.C. Superior Court is suffering from extensive judicial vacancies that have placed serious burdens on every division, increased the workloads for current judges, and delayed resolutions for the parties before the court.

I am pleased to have three exceptionally well-qualified nominees to the Superior Court here with us today, each with a longstanding commitment to public service and commendable legal abilities and professionalism. If confirmed, each of you will decide matters that impact the freedom, the livelihoods, and families of many of the individuals who come before you. Today's hearing is an important opportunity for the Committee to learn more about your qualifications and how you plan to serve in these new roles.

With that, Ranking Member Portman, you are now recognized for your opening remarks.

¹The prepared statement of Senator Peters appear in the Appendix on page 21.

OPENING STATEMENT OF SENATOR PORTMAN¹

Senator PORTMAN. Thank you, Mr. Chairman, and I want to thank the three nominees for being here today and your willingness to step forward. We are considering you as nominees for Associate Justices to the D.C. Superior Court. Each of you have spent part of your career already in public service, and if confirmed you will be doing something very important which is to serve the people of D.C. but also get the backlog down and deal with a public safety crisis, I would say, in the district.

Like a lot of large cities, D.C. is experiencing a crime surge. There have been over 200 more armed robberies this year than last year at this time. There have also been more homicides this year than there were at the same time last year.

Part of this is something happening nationally, but I think part of it is exacerbated by the backlog here in D.C. At the beginning of this year there were more than 10,000 criminal cases pending. That is more than double the number from 2020, as an example. Coronavirus Disease 2019 (COVID-19) clearly played a part in that, and I appreciate the fact that the court system is trying to help reduce the spread of COVID. But I also appreciate that they have now resumed in-person proceedings, which should help alleviate that backlog.

If the nominees are confirmed, you will be responsible for ensuring timely justice, which is important obviously to the victims and to defendants, and again, I think it is part of improving public safety in D.C. I look forward to talking to you about that during this process.

Rising crime in D.C. and the case backlog are just two of the important reasons why we need impartial and qualified judges on the D.C. Superior Court. I look forward to hearing from all three of you today.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.

It is the practice of this Committee to swear in witnesses, so if each of you would please stand and raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. BRIGGS. I do.

Judge ARTHUR. I do.

Mr. ROSS. I do.

Chairman PETERS. You may be seated.

We will now have a video from Congresswoman Eleanor Holmes Norton, who will introduce our nominees.

OPENING STATEMENT OF THE HONORABLE ELEANOR HOLMES NORTON, A UNITED STATES REPRESENTATIVE FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Chairman Peters and Ranking Member Portman, I appreciate the opportunity to introduce Kendra Briggs, Errol Arthur, and Carl Ross to be Associate Judges on the Superior Court

¹The prepared statement of Senator Portman appears in the Appendix on page 22.

of the District of Columbia. All three will bring experience and credentials to be excellent judges.

Ms. Briggs has spent the last 10 years in the United States Attorney's Office for the District of Columbia, including serving now as Senior Assistant U.S. Attorney (AUSA). She currently works in the Public Corruption and Civil Rights Section, where she prosecutes civil rights offenses in Federal court. She previously prosecuted cases in the D.C. Superior Court ranging from simple misdemeanors to homicides.

In 2020, Ms. Briggs received U.S. Attorney's Award for Exceptional Performance as an Assistant U.S. Attorney, and she has received several U.S. Attorney's Awards for Special Achievement.

Prior to her work as an Assistant U.S. Attorney, Ms. Briggs was an attorney at Shook, Hardy & Bacon, LLP, where she specialized in civil litigation.

Ms. Briggs received her law degree cum laude from the University of Miami School of Law. She clerked for Florida Supreme Court Justice Peggy Quince.

Judge Errol Arthur has served as a Magistrate in the D.C. Superior Court since 2010. Judge Arthur has presided over a wide range of bench trials during his tenure, including neglect and abuse cases, and has held arraignments and detention hearings in both juvenile and adult cases.

Judge Arthur served as a staff attorney for the Public Defender Service for the District of Columbia, serving from 1999 until he opened his own law practice in 2002. Judge Arthur was appointed Chair of the District of Columbia Board of Elections and Ethics in 2008. He has served as an adjunct professor and supervising attorney for the Howard University School of Law's Criminal Justice Clinic, and has been a visiting faculty member for Harvard Law School's Trial Advocacy Workshop.

Judge Arthur received his law degree from Howard University School of Law. He clerked for Judge Mary Gooden Terrell in the D.C. Superior Court.

Carl Ezekiel Ross serves as Counsel to the House Committee on Ethics. He previously served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Columbia. He handled more than 100 Federal appellate and district court matters. He has also served as a litigation associate with Arnold & Porter.

Mr. Ross received his law degree from William and Mary Law School. Mr. Ross clerked for Judge James Spencer of the U.S. District Court for the Eastern District of Virginia.

I very much appreciate that the Committee is moving these nominees. Unfortunately, we have a perpetual vacancy crisis in the local D.C. courts. Regardless of which party controls the Senate, to address this crisis I have introduced the District of Columbia Court Vacancy Act. This bill would expedite the appointment of local D.C. judges by applying the 30-day congressional review process for D.C. Council-passed legislation to the appointment of local D.C. judges. The House Committee on Oversight and Reform passed this bill in December. However, I urge the Committee to consider similar legislation.

I appreciate the Committee moving these nominees and I look forward to working with you to end the vacancy crisis. Thank you very much.

Chairman PETERS. I would like to once again welcome our three witnesses here today, Ms. Briggs, Judge Arthur, and Mr. Ross.

Ms. Briggs, you may now proceed with your opening remarks.

TESTIMONY OF KENDRA D. BRIGGS,¹ NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. BRIGGS. Good morning and thank you. Chairman Peters, Ranking Member Portman, and Members of this Committee, I am honored by the opportunity to appear before you today as a nominee to be an Associate Judge of the Superior Court of the District of Columbia. I am deeply grateful to you and your dedicated Committee staff for considering my nomination.

I would like to take a moment to thank the District of Columbia Judicial Nomination Commission, chaired by the Honorable Emmet G. Sullivan, for recommending me to the White House, and I am thankful to President Joseph R. Biden for nominating me to this position. I also want to thank Congresswoman Norton for her introduction this morning.

I must also thank the current U.S. Attorney for the District of Columbia Matthew Graves, and former U.S. Attorneys Ronald Machen, Vincent Cohen, Jessie Liu, and Channing Phillips for their support and guidance throughout my career as a prosecutor and throughout this process. I must also acknowledge my current and former colleagues at the United States Attorney's Office, whose dedication to public service and the citizens of the District of Columbia have made it an honor to serve alongside them for the last 12 years.

I am the eldest of four daughters born to Lindsey Davis and Patricia Moss Davis in Miami, Florida. Affectionately known as the "K" girls, my sister Khea is a dedicated and decorated high school teacher, my sister Keshara is an outstanding attorney, and my baby sister Kaneisha, was unfortunately only with us for a year before she passed away. My parents' hard work and many sacrifices served as a roadmap for our professional pursuits, and is a large part of why I am able to sit before you today. I also thank the rest of my family and friends from all over the country for their support and prayers throughout this process.

I am the proud wife of Joe Briggs, Sr., who has been instrumental in the process of my career. It was my husband who encouraged me to finally pursue my goals of first becoming an Assistant United States Attorney (AUSA), and now to seek judicial office. It is also my husband who makes parenting our son, his namesake Joe Jr., seamless in the face of both of our demanding careers. For that I want to publicly thank him for his unwavering love and support.

Since 2010, I have served as an Assistant United States Attorney in the District of Columbia. As a dedicated public servant, I have handled a wide range of criminal cases on behalf of the United

¹The prepared statement of Ms. Briggs appear in the Appendix on page 24.

States and have served under three Presidential administrations. Prior to joining the Department of Justice (DOJ), I worked for eight years as a civil litigator, representing both plaintiffs and defendants in complex civil litigation matters.

All of my legal experience, appearing in both Federal and State courts and handling both criminal and civil cases, has prepared me to serve as a judge. It is my most fervent hope to continue my service to the District of Columbia by becoming an Associate Judge of the Superior Court of the District of Columbia.

I thank you for your consideration of my nomination and I look forward to answering your questions.

Chairman PETERS. Thank you, Ms. Briggs.

I would like to welcome Judge Arthur. Judge Arthur, you may proceed with your opening remarks.

**TESTIMONY OF THE HONORABLE JUDGE ERROL R. ARTHUR,¹
NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA**

Judge ARTHUR. Good morning, everyone. Chairman Peters, Ranking Member Portman, and Members of the Committee, I am both honored and humbled to appear before you today as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia.

I would like to thank the Committee's staff for all of its hard work and dedication in preparing for this hearing. I would also like to thank President Joseph R. Biden for nominating me. I thank all of the members of the District of Columbia Judicial Nomination Commission, specifically its Chair, the Honorable Emmet Sullivan, for recommending me to the White House. I also wish to thank Congresswoman Norton for her kind words of introduction today. I would also like to thank Chief Judge Anita Josey-Herring, and former Chief Judges Robert Morin and Lee Satterfield for their leadership and guidance.

I am blessed to come from a large, loving, and supportive family, many of whom are watching online. This includes my sisters Sheyna Arthur and Justine Jaquez, brothers-in-law Antonio Beatty and Justin Jaquez, my nephews Jeromy and Jacob Jaquez, and my mother-in-law Wynell Beatty. My grandparents, John and Esther Sewchand and Priscilla Arthur are here in spirit as well.

I am thrilled that my parents, Errol and Violet Arthur, are watching from their home not far from here in Washington D.C. They left their native Guyana over 50 years ago and settled just outside of Washington, and in raising my two sisters and me, they instilled in each of us the importance of hard work, family, and community service. It was with their unwavering support and encouragement that I devoted my life to public service.

I reserve a special acknowledgment to my partner and biggest cheerleader, the Honorable Sherri Beatty-Arthur, my wife. For over 27 years she has been my rock and without her I would not be here. I am especially proud to be joined by my son, Miles Arthur, a recent graduate of Morehouse College, and my daughter, Layla Arthur, a rising sophomore at Spelman College. Miles and Layla

¹The prepared statement of Judge Arthur appears in the Appendix on page 51.

are my greatest accomplishments, and it would be a great joy to watch them in their journeys.

It is certainly a great honor to be considered to be an Associate Judge on the court where I have worked for nearly 25 years. I have been a Magistrate Judge since 2010, serving in the Family, Criminal, and Domestic Violence Divisions, where I have presided over thousands of cases in some of the court's highest-volume calendars. From 2016 through 2021, I served as the Deputy Presiding Magistrate Judge and the Presiding Magistrate Judge, where I served on the Chief Judges' Leadership teams, and covered cases in all divisions of the Court.

I began my legal career at the Superior Court, serving as a judicial law clerk to the Honorable Mary A. Gooden Terrell. After my clerkship, I served as a staff attorney with the Public Defender Service for the District of Columbia where I represented juveniles and adults in matters in the Superior Court, the Department of Youth Rehabilitation Services, and the United States Parole Commission. I then formed my own law practice where I worked until my appointment to the bench in 2010.

I was born in this great city, and this is my home. It has been an honor to serve the citizens of Washington, DC. throughout my career. I am humbled by this opportunity, if confirmed, to be an Associate Judge and to continue to serve my community and the Court that I have been a part of for decades.

I look forward to answering any questions you may have. Thank you.

Chairman PETERS. Thank you, Judge Arthur.

Mr. Ross, you may proceed with your opening remarks.

TESTIMONY OF CARL EZEKIEL ROSS,¹ NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. ROSS. Good morning Mr. Chairman, Ranking Member, and Members of the Committee. It is an honor to be before you today, and I want to thank the Members of the Committee and the dedicated Committee staff as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia.

I would like to thank the members of the District of Columbia Judicial Nomination Commission and its Chair, the Honorable Emmet Sullivan, for recommending me to the White House, and the President for nominating me. I would like to thank Congresswoman Eleanor Holmes Norton for her kind words today.

I would like to thank my parents, Gwen Ross, who is here today, and the late Carl Ross Jr. for teaching me the value of hard work. I would like to thank my siblings, Marsha Ross, who is also here today, and my other siblings who are watching remotely, Della, Cecil, Robby, Brandon, and Ryan, for keeping me grounded. I would like to thank my in-laws, Pastor Gerold and Wendy LeBlanc, for always leading by example, and I would like to thank my family, friends and mentors, including the Honorable James Spencer, the Honorable Hannah Lauck, the Honorable Rhonda Reid-Win-

¹The prepared statement of Mr. Ross appears in the Appendix on page 83.

ston, and the Honorable Rudolph Contreras for their continued guidance and support.

I would like to thank the members and staff of the House Ethics Committee including Chairman Ted Deutch and Ranking Member Jackie Walorski for their leadership and for allowing me to work alongside them in the Committee's pursuit of justice. Most importantly, I would like to thank my incredible wife Kimberly, who is also here today, for her unrelenting love and support. I am truly blessed to have her by my side.

I am a proud third-generation Washingtonian from a family of military service, civil servants, clergy, nurses, and social workers. My parents dedicated their professional careers to government service and their retirement years to caring for children in need by serving as foster parents to over 120 children, and opening a treatment foster care agency. My parents taught me from an early age the importance of giving back to the community and living by the principle that "to whom much is given, much is required in return."

Following in their public service footsteps, I began my legal career clerking for the Honorable James R. Spencer of the Eastern District of Virginia. During my clerkship, I witnessed first-hand the characteristics that make a good judge, such as patience, respect, and impartiality. I went on to work for the law firm of Arnold & Porter, here in Washington, DC, where I learned to handle large and complex legal matters.

For seven years, I served as an Assistant United States Attorney in the Civil Division of the U.S. Attorney's Office for the District of Columbia. During my tenure as an AUSA, I represented the United States in more than 100 civil cases in Federal, district, and appellate courts. For the past five years, I have had the honor of serving as Investigative Counsel for the U.S. House of Representatives Committee on Ethics where I have investigated criminal and civil matters and helped prepare those matters for adjudication by the Committee. During my time with the Ethics Committee, I have seen first-hand the importance of handling matters without prejudice, understand the need to move matters expeditiously, and comprehend the importance of ensuring that each individual that comes before the Committee receives due process.

It would be an honor to now use the tools, techniques, and skills that I have developed throughout my career to serve my fellow residents of the District of Columbia as an Associate Judge of the Superior Court of the District of Columbia. If confirmed, I will ensure that all litigants are treated fairly, I will faithfully enforce the rule of law, and I will be steadfast in upholding the Constitution.

Thank you again for considering my nomination and I look forward to answering your questions.

Chairman PETERS. Thank you, Mr. Ross.

There are three questions that this Committee asks of every nominee. I am going to ask each of you to respond briefly with just a yes or a no. We are going to start with Judge Arthur and move down the dais there.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Judge ARTHUR. No, Senator.

Ms. BRIGGS. No, Senator.

Mr. ROSS. No, Senator.

Chairman PETERS. Second, do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Judge ARTHUR. No, Senator.

Ms. BRIGGS. No, Senator.

Mr. ROSS. No, Senator.

Chairman PETERS. Lastly, do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are indeed confirmed?

Judge ARTHUR. Yes, Senator.

Ms. BRIGGS. Yes, Senator.

Mr. ROSS. Yes, Senator.

Chairman PETERS. All right. Thank you.

This first question is addressed to all three of you. The D.C. courts handle a very high volume of cases, and vacancies on both the Superior Court and the Court of Appeals have contributed to this very extensive backlog of cases. I am going to ask the three of you this question, and I will start with Ms. Briggs, then Judge Arthur, and Mr. Ross.

If confirmed, how will you manage your caseload efficiently while also ensuring that each person who comes before you has a meaningful opportunity to be heard?

Ms. BRIGGS. Thank you for the question, Senator. Serving as a prosecutor for the last 12 years I have a lot of experience managing a high-volume caseload. Coupling that with my knowledge of the laws in the district and my practice in Superior Court will allow me to quickly get up to speed if I am fortunate enough to be confirmed, and assist with the backlog in whatever section that I am assigned to.

If I am confirmed, it would always be my goal to make sure all the litigants before me have an opportunity to be heard and understand the proceedings that are taking place while also efficiently moving my docket along.

Chairman PETERS. Judge Arthur.

Judge ARTHUR. Thank you for the question, Senator. I have been a judge for nearly 11 years, and in that capacity I have presided over thousands of cases. My approach to each one of my cases is to be fully informed about the issues and the evidence in each case. When I prepare I make sure that I am fully prepared for any anticipated arguments in the case, and when we are in court I give each party an opportunity to state their case and make their arguments, and ultimately I make my decision in an efficient manner. Thank you.

Chairman PETERS. Mr. Ross.

Mr. ROSS. Thank you, Senator. I would draw upon my experience dealing with high-volume cases both as an AUSA and as a clerk for the Eastern District of Virginia. If confirmed, I would ensure that the litigants that come before me are prepared, I would ensure that the court is always prepared for the cases that come before it, and I will work efficiently to move the cases on the court's docket.

Chairman PETERS. Thank you. Mr. Briggs, what challenges do you anticipate facing as you shift from your role as an advocate to the role of an impartial adjudicator, and how are you preparing to make this transition, if confirmed?

Ms. BRIGGS. Thank you, Senator. The roles are different. An advocate starts out with a position that they must advocate on behalf of their clients or their employer. A judge must be neutral and must listen to the facts, hear the parties, and understand the law.

Serving as a Senior Assistant United States Attorney in the U.S. Attorney's Office for the District of Columbia I have had some experience in bringing in cases and being able to research and understand the law as it applies to the case that I am reviewing coming into the office and making decisions on what, if any, charges will be filed. I think I have experience doing some of the things that I will be required to do if I am fortunate enough to be confirmed as an Associate Judge.

Chairman PETERS. This question would be addressed to all three of you as well. This time we will start with Mr. Ross and then work that way across, give everybody a chance to be first up and last.

This question, again, to all three of you. In your view, what is the proper temperament of a judge? Throughout your career you have certainly developed the necessary elements of an appropriate judicial temperament. Can you at least give us examples of how that has occurred over your career?

Mr. Ross, we will start with you and then go to Ms. Briggs and Judge Arthur.

Mr. ROSS. Thank you, Senator. I believe it is important for judges to be patient in dealing with the litigants that come before them and to be objective in applying the law to the facts.

I had the good fortune of clerking in the Eastern District of Virginia for the Honorable James R. Spencer. He exhibited those characteristics each and every day, and I believe those are the important characteristics for a judge.

Ms. BRIGGS. I agree with Mr. Ross. I would add dedication. My mentor, retired Florida Supreme Court Justice Peggy Quince, I was one of her first summer law clerks after she had been appointed to the Florida Supreme Court, and watching her and speaking with her about the dedication that it takes to understanding the law, so that when the parties are before you, you have the knowledge base and you can listen to the parties fairly and then apply that law to what you have gathered in the fact-finding and listening to the parties. Thank you.

Judge ARTHUR. I agree with my co-nominees. Again, I have sat on the court for nearly 10 years and I have presided over thousands of cases. Again, I have also sat on many of the court's high-volume calendars. I find that in terms of temperament it is important that each judge gives his or her full time and attention to each case, and again, give each party an opportunity to be heard in court, to State their claims before the court. The court cannot be, and it is my view, that the court cannot exercise or exhibit any emotion when making decisions. The cases are limited to just the facts before it and the applicable law.

Chairman PETERS. Very good. One last question for the three of you, and this time we will start with Judge Arthur and move across.

I certainly appreciate the strong commitment that each of you has made to follow the facts and the laws you have expressed in the previous question when you decide cases before you. But in practice, I want to know how will you ensure that any personal biases or sympathies that you have, which we all have those innate to us—how will you ensure that they do not impact the decisions that you will make on the bench? Judge Arthur.

Judge ARTHUR. Simply stated, Senator, my personal views do not impact any decisions that I make on the bench.

Chairman PETERS. Ms. Briggs.

Ms. BRIGGS. I agree with Judge Arthur. I would add that each case must be determined by the applicable law, the facts in front of the judge, and applying that law to the facts. My personal beliefs have no place in the courtroom.

Chairman PETERS. Mr. Ross.

Mr. ROSS. I agree with my co-nominees that your personal beliefs have no place in the courtroom. Judges must be cognizant of the fact that they have to set their personal beliefs aside and apply the law objectively to the facts that are before it. I have had the good fortune, when I worked at the Committee on Ethics, of engaging in that exercise of looking at facts objectively and preparing them for adjudication.

Chairman PETERS. Thank you.

Ranking Member Portman is recognized for his questions.

Senator PORTMAN. Great. Thank you, Mr. Chairman. Mr. Ross said that judicial temperament is, in large part, patience, and Judge Arthur, the young man behind you has clearly learned patience. I think he has judicial temperament. Is he with you?

Judge ARTHUR. He is.

Senator PORTMAN. Would you like to introduce him?

Judge ARTHUR. That is my son, Miles Arthur. Oh, hold on.

Senator PORTMAN. Miles is being pretty patient too, but I am more impressed with the young guy.

Judge ARTHUR. I am sorry about that. Miles will always be my baby.

Senator PORTMAN. Who is the other young man?

Ms. BRIGGS. The young guy belongs to me. That is my 6-year-old son, Joe Jr.

Senator PORTMAN. Oh, I am sorry, Ms. Briggs. I did not realize that was yours. OK, good. That just woke him up. I am sorry about that. But seriously, great patience.

We talked about violent crime earlier, and it is a huge problem around our country right now, and it is making so many communities unsafe and hurting the residents of some of our poorest communities and small businesses and others. D.C., unfortunately, is experiencing that surge as well. Homicides and armed robberies are on the rise. I talked earlier about the number of armed robberies this year compared to last year. It is shocking. I think reducing crime has to be a top priority of our judicial system all the way through.

For all the witnesses, quickly, what do you think the court's role is in reducing crime, and how can the D.C. court system do a better job to prevent this crime wave from continuing to grow? Maybe start with Mr. Ross.

Mr. ROSS. Thank you. Thank you for the question, Senator. The best thing the D.C. courts can do to address crime is address the backlog of cases that are before it. The courts have limited authority, and that authority is limited to the cases and controversies that come before it. It does have the power to address the backlog of cases, move their docket efficiently, and ensure that the victims of crime receive timely justice.

Senator PORTMAN. Ms. Briggs.

Ms. BRIGGS. Thank you, Senator. I agree with Mr. Ross. I think the timely adjudication of cases and addressing the court's backlog will assist in the endeavor of trying to conquer the crime problem here in the district. Thank you.

Senator PORTMAN. Judge Arthur.

Judge ARTHUR. I agree with my co-nominees, Senator. I would add that the timely resolution of the cases is essential because it does address issues of uncertainty for the defendants. It does ensure resolution of cases for complaining witnesses and victims in the community. Also it affects the public's confidence in the court system. So addressing the backlog and addressing the cases in a timely fashion is essential.

Senator PORTMAN. Mayor Bowser has criticized the backlog. She said it is a public safety concern, so I do not disagree with what any of you said. But it is also about how the case is ultimately resolved, right? In other words, the decisions that you will make with regard to cases, with regard to saying to those habitual criminals, you cannot keep doing this. There is going to be a consequence. Do you agree with that? Mr. Ross.

Mr. ROSS. Yes. The court, in all of its cases, has to look at the facts before it objectively. On the issue of crime there are certain factors that the court must look at when carrying out sentencing, and the court must stick to those factors when issuing its sentencing.

Senator PORTMAN. Ms. Briggs.

Ms. BRIGGS. I agree with my co-nominee.

Senator PORTMAN. Judge Arthur.

Judge ARTHUR. I agree with my co-nominees. However, the court must make its decisions based solely on the facts and the law, Senator.

Senator PORTMAN. Let me ask you a little if I could, Mr. Arthur, about your background. You have been a Magistrate Judge in D.C. Superior Court for more than 10 years, but before that you practiced in a lot of areas of law, including criminal defense. As a judge, you have also served in the Criminal Division. How do you approach that transition from being an advocate for criminal defendants to being a judge in criminal cases, where your job is to, again, have consequences for those habitual criminals who are causing these crime waves in places like D.C.?

Judge ARTHUR. Thank you, Senator. Again, when I was appointed to the bench in 2010, I had been practicing for over 10 years in the District of Columbia, primarily doing criminal defense.

In preparation for my appointment I spoke to my colleagues on the bench, including my mentor, the Honorable Mary A. Gooden Terrell, and went through the process of how to make judicial decisions. It was stressed upon me, not only in my time in preparation for my appointment but also during my training sessions preparing to take the bench, that training, in my view, was essential in making decisions and being able to separate the role that I had once as an advocate and now currently as a judge.

Senator PORTMAN. Ms. Briggs, you have been a prosecutor for more than 10 years. You prosecuted public officials charged with corruption and police charged with civil rights offenses. How would you approach your transition from being a prosecutor to being a judge in criminal cases, including those cases involving alleged wrongdoing by public officials and law enforcement?

Ms. BRIGGS. My transition would be I would not have additional information before me that I have when I am prosecuting cases. The role of a judge is to understand the law, gather the facts, and hear from the parties before. That is what my focus would be, and then I would apply the law to the facts that have been gathered, and make sure that I issue well-thought-out opinions and rulings. Thank you.

Senator PORTMAN. In terms of personal views and politics, in your disclosure you have to reveal your contributions, and Ms. Briggs, you have donated to political candidates of one party in the past. Will you commit to setting aside your partisan or personal views as a judge?

Ms. BRIGGS. Thank you, Senator. Absolutely. Those are personal expressions. I will be governed by the Code of Judicial Conduct if I am fortunate enough to be confirmed. That has limitations on what political activity I can be involved in, and I will be bound by those rules. Thank you.

Senator PORTMAN. Mr. Ross, your legal experience involves civil cases and cases in Federal court. Hearing criminal cases is different, and it is even different than the work you are doing now on the Ethics Committee, although I understand you have looked at allegations that would be criminal as well as violating our rules here in the House and Senate. How would you prepare to hear criminal cases and to be a judge, and what in your background qualifies you to take on the criminal cases?

Mr. ROSS. Thank you for the question, Senator. In terms of what in my background qualifies me to handle criminal cases, as you mentioned in my current position I investigate matters that are both civil and criminal in nature and help prepare those matters for adjudication for the House Ethics Committee.

With respect to the transition to actually being a judge, it would be important to get up to speed on both the criminal code here in D.C., the rules regarding criminal procedure here in D.C., and ensure that I can view every case that comes before me objectively, with a nuanced understanding of the law, and apply the law evenhandedly in all of those matters.

Senator PORTMAN. Thanks to all three of you. Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.
Senator Hawley, you are recognized for your questions.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you very much, Mr. Chairman, and congratulations to the nominees. Thank you for being here.

Let me start with you, Mr. Ross, if I could. A few years ago you were counsel for some years at Arnold & Porter. Is that right? Do I have that right?

Mr. ROSS. Yes, that is correct, Senator.

Senator HAWLEY. I just want to ask you about some of what you did there. I understand you represented a number of large pharmaceutical companies in your time there as an associate. Have I got that right?

Mr. ROSS. That is correct, Senator.

Senator HAWLEY. Can you describe the nature of that representation? Let me just ask you a little more specifically. Did any of the work concern opioids?

Mr. ROSS. No, Senator. None of the work concerned opioids.

Senator HAWLEY. What about patent infringement?

Mr. ROSS. No, Senator. None of the work involved patent infringement.

Senator HAWLEY. Can you give us an overview of the sort of matters that you did handle in that vein?

Mr. ROSS. Yes, Senator. With respect to my time at Arnold & Porter, and it was some years ago, the pharmaceutical defense work that I did was primarily toward liability with respect to specific products.

Senator HAWLEY. Got it. Thank you. That is very helpful.

Judge Arthur, if I could come to you, I want to ask you about a case that you had a few years ago, back in 2017, end of 2017. It is a petition of J-O. This was an adoption petition, where the D.C. Court of Appeals held that you erred in granting the adoption petition because the birth mother was not competent to designate a preferred caregiver under D.C. law. Do you remember this case at all? I mean, it has been several years ago.

Judge ARTHUR. It has been several years. I remember the decision, yes.

Senator HAWLEY. Let me give you a few of the facts and then if you cannot remember enough, I realize some time has elapsed and I can give some of this to you for the record, because I do not want to catch you off-guard here.

My purpose in asking you this, this is a case where you were reversed. You have been a judge for a number of years. Anybody who sits on the court for any length of time is going to be reversed so I am not trying to catch you out here. What I am more interested in is just trying to understand how you think and then also, as currently a magistrate judge, how you deal with getting reversed, what you take from that, how you apply those lessons. That is what I am after here.

In this case the court held that given the birth mother's mental history, her mental health history, that she was not in a position to make a determination about what was in her child's best interest. You had recommended that her, the birth mother's, determination about a preferred caregiver be allowed to stand. That is what the D.C. Court of Appeals reversed.

The opinion said the child's biological mother had a history of mental health problems. She was admitted to inpatient psychiatric care at the hospital where she remained hospitalized for a number of weeks after giving birth. She had long medical and mental health history, which is tragic. She had suffered a serious brain injury at 19, had a history of substance abuse, and so on and so on.

Her sister testified that the mother would wander about in New York, D.C., and Virginia. She was mentally ill. She was frequently homeless—this is a sad story—and often appeared delusional.

It was a long opinion. It was about 45 pages, which is a pretty lengthy opinion for the highest court of the District of Columbia. I just want to, to the extent you remember it, I am just curious about what you took from this case, and maybe more generally, being reversed, what lessons do you draw from that and then how do you apply those going forward?

Judge ARTHUR. Thank you for the question, Senator. It has been some years since that decision was made. I do recall many of the facts of the case. I, however, have to admit that I do not know what the status of the case is given that it did involve a related matter, so it would not be appropriate for me to comment on the specifics of the case as a sitting judicial officer and as a nominee.

In terms of making my decision, what I did do is I did pay close attention to the evidence in the case and the facts in the case in rendering my decision, and I applied what I believed to be at the time the appropriate standard in assessing the birth parent's choice of caregiver.

As it relates to how I handle or how I would react to the Court of Appeals' decision, I would honor it moving forward. It is good law, Senator.

Senator HAWLEY. Very good. Let me ask you, just from your experience serving as a Magistrate Judge, as you have presided over your docket for some years now, are there any particular problems that you have noticed within the D.C. judicial system, from our vantage point, that you think you are able to speak to?

Judge ARTHUR. As a sitting judge it is not appropriate for me to speak on certain issues. I will say, as was alluded to earlier in the questions and in our responses, that the backlog created by COVID-19 and the judicial vacancies is a primary issue for the court and it must remain as a priority.

Senator HAWLEY. Are there any other steps or reforms that you would like to see in the D.C. court system, based on your experience, that you think would help justice be better administered here in the district?

Judge ARTHUR. As a sitting judge and as a nominee it is not appropriate for me to comment on or to answer that question.

Senator HAWLEY. But the backlog issue is one that you have addressed. You feel strongly about that, it sounds like.

Judge ARTHUR. The backlog is an issue. I deal with the cases every day, and our judges make it a priority to address the backlog in cases. Our court is expanding its operations and we are making headway in addressing the backlog.

Senator HAWLEY. Very good. Let me ask you each about criminal penalties. Senator Portman touched on this, which I think is a very important topic, given the terrible rise in violent crime, unfortu-

nately crime of all kinds but especially violent crime that we are seeing all over the country, and that includes here in the district.

I would like to know from each of you, are there any criminal penalties that you feel you would have trouble applying as a judge? Any penalties to which you have a policy, objection, or policy concerns?

Let us just go right down the line. I guess we will start with you, Judge.

Judge ARTHUR. Again, as a sitting judge and as a nominee it is not appropriate for me to answer that question.

Senator HAWLEY. So the answer is not no?

Judge ARTHUR. Pardon me?

Senator HAWLEY. The answer is a maybe?

Judge ARTHUR. Again, I cannot comment on me and my views on sentencing.

Senator HAWLEY. What you are telling me is you might have some concerns. You might have some policy objections but you are not going to tell me what they are?

Judge ARTHUR. No, that is not what I am saying. My personal views do not factor into any decision I make regarding sentencing. I am bound to assess the facts of the case and the applicable law, and in sentencing I would consider any statutory maximums or minimums in the case.

Senator HAWLEY. OK. What about you, Ms. Briggs?

Ms. BRIGGS. No, Senator.

Mr. ROSS. No, Senator.

Senator HAWLEY. What about areas of law that may be over-criminalized, in your view? Are there any areas of law that you think are over-criminalized? Ms. Briggs, I have not given you a chance to go first, and you are a Federal prosecutor now, so let me ask you first.

Ms. BRIGGS. No, Senator.

Senator HAWLEY. Mr. Ross.

Mr. ROSS. No, Senator.

Senator HAWLEY. Judge.

Judge ARTHUR. No, Senator.

Senator HAWLEY. OK. My time has expired and I think there are probably others—yes, Senator Carper is here—waiting to question. So for the record, Ms. Briggs, since I did not get to visit much with you, I want to ask you a little bit about your experience as a Federal prosecutor, including applying the guidelines. I realize you would not be dealing with the Federal guidelines in this new role but you have dealt with them for a number of years now. I think that is very important. I am going to ask you some questions about that.

Judge, I may give you another question or two about that case we were discussing, more specifically, to jog your memory.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Hawley. Senator Carper, you are recognized for your questions.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. Thank you, Senator Hawley.

Welcome. I think I had an opportunity to meet all of you. We talked about your names, where they came from, a little bit about your family history, and we are honored to be here, holding this hearing, considering your nomination.

Before I was elected Governor I was a Naval Officer in the Vietnam War and later on moved to Delaware and got to be Treasurer, Congressman, and Governor.

Before I was sworn in as Governor, I had been elected, and before I was sworn in I was visited by a former Governor, Bert Carvel, who had been Governor for eight years earlier in our State's history. He came to give me some advice. He said in the State of Delaware the judiciary is incredibly important, the Supreme Court, the Court of Chancery, Superior Court, other courts. He said it is sort of like we punch above our weight when it comes to the judiciary in the State of Delaware. And he said, "As Governor you get to nominate people to serve in these capacities. Do not screw it up."

I worked for eight years to try to identify the very best people we could find to be nominated and to be hopefully confirmed. In those eight years, everyone I ever nominated was confirmed, and went on to serve, I think, which is a real distinction, so it is really important.

We had a situation. We had a legislature, Democratic majority in the Senate and Republican majority in the House. We actually worked together to get people confirmed and to do the best that we could. I approached this hearing today, as I do many things, as a recovering Governor. I just wanted to mention that.

The average time it takes, Mr. Chairman and colleagues, to fill a vacancy on the D.C. Superior Court, of which you have all been nominated to serve in, is over three years. If we had done that in the State of Delaware we should have all been thrown out of office. It is just appalling. Justice delayed is justice denied.

What is more, the Superior Court here in the District of Columbia has among the highest case filings per capita in the United States, I am told, with 83,000 case filings in 2019 alone. So not only is the court struggling with vacancies, it is also confronting a substantial workload.

These needlessly lengthy judicial vacancies have burdened the D.C. Circuit Court and the Court of Appeals, delaying justice for our fellow Americans, and as I often said, and I will say it again, justice delayed is justice denied.

The nearly 700,000 Americans who live in D.C. pay taxes. They serve our country, many times in uniform. They start businesses. They care for their neighbors, their friends, and colleagues, just like the rest of us, and yet they are not treated like every other American from our 50 States. Congress approves their budget. They have a better credit rating than we do, and we have to approve their budget. We confirm their judges, and we subject them to a higher Federal per capital income tax rate than any of the other 50 States.

To make matter worse, we, in Congress, take our time when it comes to accomplishing these tasks. Toward that end, I am glad that we are considering these nominees today, Mr. Chairman. I look forward to working with my colleagues on both sides of the aisle, including my fellow former Governors. We have some recovering Governors on this panel. Along with me they include Senator Hassan and Senator Scott of Florida.

But we want to resolve the issues of these judicial vacancies. With that I thank you for the chance to offer those comments.

I have a question, at least one question that I would like for us to get to. Again, when I served as Governor of Delaware it was my responsibility to nominate individuals to serve on our State's highly regarded courts, the Court of Chancery, the Supreme Court, and others. Considering potential candidates, I looked for the following five attributes: sound moral character, a complete knowledge of the law, a willingness to listen to both sides of an argument, good judicial temperament, and the ability to make difficult decisions with sound reasoning within a reasonable period of time.

Could each of you please take maybe a minute apiece to discuss the importance of having these attributes as a judge and how, if confirmed, you would bring these qualities to the District of Columbia's Superior Court as an Associate Judge?

Mr. Arthur, please. Is it Arthur? I can barely see your nametag. There we go. Take it away, please.

Judge ARTHUR. Thank you, Senator. You characterized the standard for which I try to hold myself to every day that I appear in court. Again, I have been a judge now for nearly 11 years.

Senator CARPER. I should have addressed you as Judge Arthur. This is not your first rodeo.

Judge ARTHUR. It works. I will say, again, every day that I enter my courtroom I make sure that I ensure that every person is heard, that every case is addressed, and that I make fair and efficient decisions.

Senator CARPER. Thank you. I think the default here is, for your work, if you are confirmed to this post, the default here is the Golden Rule, trying to figure out what to do and treat other people the way you want to be treated. I think that always works.

Ms. Briggs.

Ms. BRIGGS. Thank you for the question, Senator. Those standards you listed are embodied in what I think the role of a judge is, and if I am fortunate enough to be confirmed I will make sure that I understand the law, that I gather the facts, and that I fairly hear from the litigants and then apply that law to the facts in making any rulings and decisions. Thank you.

Senator CARPER. Thank you, ma'am. Mr. Ross.

Mr. ROSS. Thank you, Senator. I also agree that characteristics that you described embody what I hope to be as a judge, if confirmed—impartial, ensuring that I treat all litigants equally that come before the court, moving the court's docket efficiently, and making sure that any opinions that are issued are clear and concise.

Senator CARPER. Good. Before the hearing began we had a chance to talk a little bit. Your middle name is Ezekiel, and I mentioned I had been reading through the Old Testament and came

across Ezekiel quite a bit. You are named after him, I believe. Is that correct?

Mr. ROSS. That is correct.

Senator CARPER. Can you think of any qualities that Ezekiel demonstrated that you might want to embrace as a member of the bench here in the District of Columbia? Does anything come to mind?

Mr. ROSS. Patience, Senator.

Senator CARPER. To that I will just say amen.

All right. I have one other question. I am going to ask the other question for the record if I could, and just ask all of you to respond for the record. Is that all right, Mr. Chairman? Good. I still want you to respond, but I will ask you to respond for the record, and I can get back to my other hearing that I am supposed to be at.

In looking over your biographies and looking through your opening statements I noticed that you all have a strong connection to the District of Columbia, whether through your personal life or your professional life, and I admire your desire to take on these roles and continue giving back to this community through public service.

The job of an Associate Judge on the D.C. Superior Court is no small task, given the backlog and the extended judicial vacancies the court is currently facing. The question I am going to ask you to answer for the record is this. Could each of you take some time to share with us in writing why you want to take on the role of D.C. Superior Court Judge and how you will use your service to ensure that your fellow Americans are expeditiously and justly granted their day in court? I will ask you to do that for the record.

In the meantime, from what I can tell and from what my staff tells me, you are ideally well suited for these roles and we are grateful to you for your willingness to serve, grateful to your families for their willingness to share you with the folks of the District of Columbia.

All right. Thank you. Thanks, Mr. Chairman.

Chairman PETERS. Thank you, Senator Carper.

As we get ready to wrap up this hearing I have one final question for each of you to answer. From the testimony you have given here today it is clear that you are all very talented individuals with great professional accomplishments and have a wealth of experience. When you have all of those things you have a lot of options in life, and there are a lot of options for you in the private sector that potentially could be more lucrative than the position that you are seeking right now, and yet each of you have decided to pursue public service.

I want to know, and the Committee would like to know, what is it about public service that attracts you to this position and why have you decided to focus on that in seeking this position?

I will start with you, Ms. Briggs, and then we will go to Mr. Ross, and finish up with Judge Arthur.

Ms. BRIGGS. Thank you, Senator. I have had a long-time interest in serving as judicial officer, and as I mentioned earlier I have been a dedicated public servant at the U.S. Attorney's Office for the District of Columbia for the past 12 years. It would be an honor to con-

tinue that service as an Associate Judge with the Superior Court of the District of Columbia.

But that long-time interest was sparked when I walked into the office of retired Florida Supreme Court Justice Peggy Quince and got to see someone that looks like me in a judicial robe. I knew, from that moment on, that I wanted to follow in her footsteps. Thank you.

Chairman PETERS. Mr. Ross.

Mr. ROSS. Thank you, Senator. I am simply following in the example that my parents set forth. My parents chose public service throughout their careers. They led by example each and every day. From a very early age I understood the importance of giving back to the community. I have had the good fortune of serving in public service in all three branches of the government, I have developed a certain number of skill sets over the course of my career, and I would like to now use the skills and experience that I have developed throughout my career to serve my fellow residents of the District of Columbia.

Chairman PETERS. Very good. Judge Arthur.

Judge ARTHUR. Thank you, Senator. Again, as I alluded to in my opening statement, my parents served as the foundation for me, and they encouraged me to pursue a career in public service. I have been blessed throughout my life to be surrounded by individuals who supported and encouraged me to pursue that.

Like my colleagues, I had the good graces of working for the Honorable Mary A. Gooden Terrell, who encouraged me, even after my clerkship, to consider the bench. I have had the good fortune of working in one of the best trial courts in America. That is the D.C. Superior Court. I have served there for nearly 11 years; it will be 11 years in August—and I can honestly say that every day that I go into court I learn something new, I enjoy the work that I do, and I look forward, if confirmed, to being an Associate Judge at the Superior Court.

Chairman PETERS. Thank you, Judge Arthur, and thank you to the three of you for being here before us here today, and congratulations to three of you on your nomination and your willingness to take on these very challenging positions before you.

The nominees have filed responses to biographical and financial questionnaires,¹ and without objection this information is going to be made part of the hearing record,² with the exception of the financial data which is on file and available for public inspection in the Committee offices.³

The hearing record will remain open until 12 p.m. tomorrow, July 13th, for the submission of statements and questions for the record.

This hearing is now adjourned.

[Whereupon, at 10:55 a.m., the hearing was adjourned.]

¹The information of Ms. Briggs appear in the Appendix on page 25.

²The information of Judge Arthur appear in the Appendix on page 52.

³The information of Mr. Ross appear in the Appendix on page 84.

A P P E N D I X

**Chairman Peters Opening Statement As Prepared for Delivery
Full Committee Hearing: Nominations of Errol R. Arthur, Kendra D. Briggs, and Carl
Ezekiel Ross to be Associate Judges, Superior Court of the District of Columbia
July 12, 2022**

Today we are considering three nominations, Kendra Briggs, Errol Arthur, and Carl Ross to be Associate Judges on the Superior Court of the District of Columbia.

Welcome to each of the nominees and to your family members who are joining us today. Thank you all for your previous public service and your willingness to serve in these important new roles.

The D.C. Superior Court, which operates as the state-level trial court in the nation's capital, has one of the highest per-capita rates of cases filed. According to the National Center for State Courts, 83,000 new cases are filed across its five divisions every year.

Unfortunately, the D.C. Superior Court is suffering from extensive judicial vacancies that have placed serious burdens on every division, increased the workloads for current judges, and delayed resolutions for the parties before the court.

I am pleased to have three well-qualified nominees to the Superior Court today, each with a longstanding commitment to public service, and commendable legal abilities and professionalism.

If confirmed, you will decide matters that impact the freedom, livelihoods, and families of many of the individuals who come before you.

Today's hearing is an important opportunity for the Committee to learn more about your qualifications and how you plan to serve in these new roles.

Opening Statement [as prepared]
Ranking Member Rob Portman

*Homeland Security and Governmental Affairs Committee Hearing:
Nominations of Errol Rajesh Arthur, Kendra Davis Briggs, and
Carl Ezekiel Ross to be Associate Judges on the D.C. Superior Court
Tuesday, July 12, 2022*

Thank you, Chairman Peters.

I want to thank the three nominees for being here today as the committee considers their nominations to be Associate Judges on the D.C. Superior Court. Each of them has spent part of their careers in public service, and I appreciate their willingness to serve as judges for the D.C. community.

There are important issues facing D.C. right now. Like many other large cities, our Nation's Capital is experiencing a crime surge. There have been over 200 more armed robberies this year than there were at this time last year. There have also been more homicides this year than there were at the same time last year.

What this all means is that the D.C. courts have a serious case backlog.

At least at the beginning of this year, there were more than 10,000 criminal cases pending. That's more than double the number from 2020. Part of this backlog is due to the COVID-19 pandemic. I appreciate that the court system was trying to help reduce infections during that time. However, I understand it has now resumed most in-person proceedings, which will alleviate the backlog. But this is still an important issue to address. If confirmed to be judges on the D.C. Superior Court, you will be responsible for ensuring timely justice for all parties, both defendants and victims, to improve public safety.

Rising crime in DC and the case backlog are just two of the important reasons why we need impartial and qualified judges on the D.C. Superior Court. I look forward to discussing these issues with the nominees. Thank you.

Opening Statement of Kendra Davis Briggs
Nominee to be Associate Judge of the Superior Court of the District of Columbia
July 12, 2022

Chairman Peters, Ranking Member Portman, and members of this Committee, I am honored by the opportunity to appear before you today as a nominee to be an Associate Judge of the Superior Court of the District of Columbia. I am deeply grateful to you and your dedicated Committee staff for considering my nomination. I would like to take a moment to thank the District of Columbia Judicial Nomination Commission, chaired by the Honorable Emmet G. Sullivan, for recommending me to the White House, and I am thankful to President Joseph R. Biden for nominating me to this position. I must also thank the current U.S. Attorney for the District of Columbia Matthew Graves, and former U.S. Attorneys Ronald Machen, Vincent Cohen, Jessie Liu, and Channing Phillips for their support and guidance throughout my career as a prosecutor and through this process. I must also acknowledge my current and former colleagues at the U.S. Attorney's Office, whose dedication to public service and the citizens of the District of Columbia have made it an honor to serve alongside them for the last twelve years.

I am the eldest of four daughters born to Lindsey Davis and Patricia Moss Davis in Miami, Florida. Affectionately known as the "K" girls, my sister Khea is a decorated high school teacher, my sister Keshara is an outstanding attorney, and my baby sister Kaneisha, was unfortunately only with us for one year before she passed away. My parents' hard work and many sacrifices served as a roadmap for our professional pursuits, and is a large part of why I am able to sit before you today. I also thank the rest of my family and friends from all over the country for their support and prayers throughout this process.

I am the proud wife of Joe Briggs, Sr., who has been instrumental in the success of my career. It was my husband who encouraged me to finally pursue my goals of first becoming an Assistant United States Attorney, and now to seek judicial office. It is also my husband who makes parenting our son, his namesake Joe Jr., seamless in the face of both of our demanding careers. For that I want to publicly thank him for his unwavering love and support.

Since 2010, I have served as an Assistant United States Attorney at the U.S. Attorney's Office for the District of Columbia. As a dedicated public servant, I have handled a wide range of criminal cases on behalf of the United States and have served under three presidential administrations. Prior to joining the Department of Justice, I worked for eight years as a civil litigator, representing both plaintiffs and defendants in complex civil litigation matters. All of my legal experience, appearing in both federal and state courts and handling both criminal and civil cases, has prepared me to serve as a judge. It is my most fervent hope to continue my service to the District of Columbia by becoming an Associate Judge of the Superior Court of the District of Columbia.

I thank you for your consideration of my nomination and I look forward to answering your questions.

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).

Kendra Davis Briggs
Kendra Nicole Davis

2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

I am a U.S. citizen.

3. Current office address and telephone number.

U.S. Attorney's Office for the District of Columbia
601 D Street NW
Washington, DC 20579
(202) 252-7524

4. Date and place of birth.

December 19, 1974; Miami, Florida.

5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I am married to Joe D. Briggs Sr., an attorney for the NFL Players Association. The Association address is: 1133 20th Street NW, Washington, DC 20036.

6. Names and ages of children. List occupation and employer's name if appropriate.

REDACTED

7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

University of Miami School of Law, 1999 – 2002. Juris Doctor (cum laude) received May 2002).

Florida State University, 1994 – 1996. Bachelor of Science in Criminology received

August 1996.

Florida A&M University, 1992 – 1994. Associate in Arts received April 1996.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

1997 – 1999
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, Florida 32301
Paralegal

1996 – 1997
Broward County Public Schools
600 SE Third Avenue
Fort Lauderdale, FL 33301
Substitute Teacher

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Department of Justice Special Achievement Award (2012, 2013, 2014 and 2021)

U.S. Attorney's Award for Exceptional Performance as an Assistant United States Attorney (2020)

Timeless Service Award, Xi Omega Chapter of Alpha Kappa Alpha Sorority, Inc. (2018)

Presidential Award, National Bar Association (2012)

Dean's Fellow Writing Center, University of Miami School of Law (2000 – 2002)

The Society of Bar and Gavel, University of Miami School of Law (2000 – 2002)

Omicron Delta Kappa, The National Leadership Honor Society (2000 – 2002)

"Best Oralist" Advanced Moot Court, University of Miami School of Law (2001)

Honors in Litigation Skills, University of Miami School of Law (2001)

Phi Delta Phi, The International Legal Honor Society (2000 – 2001)

CALI Excellence for the Future Award in Civil Procedure, University of Miami School of Law (2000)

Dean's Honor Scholarship, University of Miami School of Law (1999 – 2002)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

District Motherhued
Board Member (2018 – present)

IMPACT
General Counsel—Pro Bono (2008 – 2011)

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

National Black Prosecutors Association
Member (2019 – present)

American Bar Association
Member (2015 – 2016)

National Bar Association
Member (2009 – 2012)

Florida Association of Women Lawyers
Member (2005 – 2006)

Tallahassee Barristers Association
Member (2002 – 2006)

Virgil Hawkins Florida Chapter, National Bar Association
Member (2002 – 2006)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Alpha Kappa Alpha Sorority, Inc.

Member (2007 – present)
Assistant Membership Chair, Xi Omega Chapter (2018 – 2020)
Undergraduate Initiatives Chair, Xi Omega Chapter (2020 – 2022)

Nation’s Capital Chapter of Jack and Jill of America, Inc.
Editor (2021 – present)
Member (2020 – present)

Alpha Kappa Alpha Sorority, Incorporated limits its membership to women. Jack and Jill of America, Inc., is an organization with a focus on mothers with African American children.

- 13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

Florida
Admitted 2002

District of Columbia
Admitted 2008

United States District Court for the District of Columbia
Admitted 2011 (Estimated)

United States District Court for the Northern District of Florida
Admission Date Unknown

There have been no lapses in membership.

- 14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

I have no published writings.

- 15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

- 16. Legal career.**
A. Describe chronologically your law practice and experience after graduation from law school, including:

- (1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I have not served as a law clerk.

- (2) **Whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

- (3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

2002 – 2006
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, Florida 32301
Senior Associate

2006 – 2008
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399
Assistant General Counsel

2008 – 2010
Shook, Hardy & Bacon, LLP
1800 K Street NW, Suite 1000
Washington, DC 20006
Staff Attorney

2010 – present
U.S. Attorney's Office for the District of Columbia
601 D Street NW
Washington, DC 20579
Assistant United States Attorney

- B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

Over the course of 19 years, I have enjoyed a significant and diverse legal practice. While in private practice from 2002 to 2006, I litigated medical malpractice cases. From 2006 to 2008, I represented the State of Florida in roadway construction litigation cases. From 2008 to 2010, I defended pharmaceutical companies against product liability claims. Since 2010, I have served as an Assistant United States Attorney for the District of Columbia,

prosecuting a wide array of felony offenses including public corruption.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

From 2002 to 2008, I specialized in plaintiff-side civil litigation. From 2008 to 2010, I specialized in defense-side civil litigation. Since 2010, I have served as an Assistant United States Attorney in the U.S. Attorney's Office for the District of Columbia. I have practiced in both the Superior Court of the District of Columbia and the United States District Court for the District of Columbia.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

While in private practice from 2002 to 2006 and 2008 to 2010, I appeared in court approximately once every three to four months. I appeared in court daily as an Assistant United States Attorney in the Superior Court Division from 2010 to 2016. Since 2017, I have appeared in court monthly as an Assistant United States Attorney assigned to the Criminal Division.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

25%

(b) State courts of record (excluding D.C. courts);

0%

(c) D.C. courts (Superior Court and D.C. Court of Appeals only);

75%

(d) other courts and administrative bodies.

0%

(3) What percentage of your litigation has been:

(a) civil;

40%

(b) criminal.

60%

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I have served as sole counsel in over 40 criminal cases tried to verdict. I served as an associate counsel in one civil case tried to verdict.

(5) What percentage of these trials was to

(a) a jury;

60%

(b) the court (include cases decided on motion but tabulate them separately).

40%

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1. *United States v. Delonta St. John*, Case No. 2007-CF1-005712, Superior Court of the District of Columbia (2018) (before Judge Michael Rankin)

In 2009, a jury found Delonta St. John guilty of second-degree murder while armed and other charges, and he was sentenced to serve 31 years in prison. The jury trial stemmed from a dispute over the outcome of a roll of the die while gambling during a dice game. St. John argued with the decedent, another participant in the game, and fired several shots from a handgun striking the decedent three times. The decedent died from complications associated with his wounds approximately three months after the shooting. The decedent's estate filed a civil lawsuit against the hospital and trauma surgeon who treated

the decedent at the hospital, alleging that the hospital and trauma surgeon rendered negligent treatment to the decedent.

In 2016, St. John filed *pro se* a § 23-110 motion, arguing that his trial counsel was ineffective because he failed to properly investigate whether the trauma surgeon's negligent medical care was an intervening cause of the decedent's death. In a supplemental § 23-110 motion, St. John argued that the government violated *Brady v. Maryland* and *Giglio v. United States*, by presenting the allegedly false testimony by the trauma surgeon and a medical examiner that the decedent died from complications stemming from gunshot wounds.

I filed the opposition, on behalf of the government, to the § 23-110 motion arguing that St. John's claims were procedurally barred and failed on the merits because trial counsel was not ineffective for making a tactical decision not to hire a defense expert or cross-examine the surgeon about the pending civil lawsuit, and that a hearing was not necessary because defendant's claims were refuted by the existing record. Judge Rankin agreed with the government's argument, and found that St. John's claims were procedurally barred and any "newly discovered evidence" had been disclosed by the government before the criminal trial.

Opposing Counsel:

Delonta St. John (*pro se*)

Supervisor:

Margaret Chriss, Chief of the Special Proceedings Division
601 D Street NW
Washington, DC 20579
(202) 252-7555

2. *United States v. Takisha Brown Dorsey*, Case No. 17-CR-00022, Superior Court of the District of Columbia (2018) (before Judge Reggie B. Walton)

Takisha Brown Dorsey was the chairperson of the union representing correctional officers employed by the District of Columbia Department of Youth Rehabilitation Services (DYRS). In 2014, Dorsey removed a safeguard requiring a second signature on all union checks, making herself the only required signatory. In 2015, members of the union's executive board learned that the union's bank account balance was only \$277, even though more than \$100,000 in union dues were deposited into the account in calendar year 2015. I was the lead prosecutor, and my subsequent investigation revealed that during Dorsey's tenure, she withdrew more than \$130,000 from the union's bank account for her personal use.

I investigated the matter with the Federal Bureau of Investigation, and as a result of the investigation, Dorsey pled guilty in 2017 to a charge of wire fraud, in the U.S. District Court for the District of Columbia. She was sentenced by Judge Walton to 10 months in prison.

Opposing Counsel:

Wendell Robinson, Esq.
7600 Georgia Avenue NW, Suite 203
Washington, DC 20011
(202) 223-4470

Supervisor:

Michelle Zamarin (former Deputy Chief of Fraud and Public Corruption)
601 D Street NW
Washington, DC 20579
(202) 252-6931

3. *United States v. Jashua Johnson*, Case No. 2012 CF1 12137, Superior Court of the District of Columbia (2014) (before Judge Robert E. Morin)

Jashua Johnson was charged with first degree murder while armed for the murder of Davon Brown, an innocent bystander who was repeatedly shot by Johnson as the intended victim tried to flee. The intended victim survived his injuries.

I was assigned this case, along with a colleague, one month before trial, and had to quickly learn and prepare for Johnson's trial. I handled several pre-trial motions, delivered the opening statement and conducted the direct examination of several witnesses, including law enforcement, expert witnesses, and an eyewitness. Additionally, although two eyewitnesses had previously identified Johnson as the shooter, one of the eyewitnesses failed to identify Johnson in the courtroom. Ultimately, the jury acquitted Johnson.

Opposing Counsel:

Jason Downs, Esq.
1155 F Street NW, Suite 1200
Washington, DC 20004
(202) 383-4436

Co-Counsel:

Shana Fulton, Esq. (former Assistant United States Attorney)
150 Fayetteville Street
1700 Wells Fargo Capitol Center
Raleigh, North Carolina 27601
(919) 882-2522

4. *United States v. Paul Smith*, Case No. 2012-CF3-21885, Superior Court of the District of Columbia (2013) (before Judge William Jackson)

Paul Smith was charged with multiple counts of Kidnapping While Armed and one count of Assaulting, Resisting or Interfering with a Police Officer (Felony) for a 2012 armed

robbery. The robbery victims were good Samaritans who offered Smith, known to them from the neighborhood, a ride home on Christmas Eve. While pursuing Smith for armed robbery, Officer Monir shot him in self-defense after Smith aimed a loaded gun at Officer Monir. The police encounter was observed by several eyewitnesses and narrated in a 7-minute 911 call by an unidentified caller.

I was the lead prosecutor and crafted a litigation strategy that included filing a motion in limine to limit the cross-examination on whether Officer Monir was justified in discharging his service weapon and injuring Smith. Smith ultimately pled guilty to the indictment on the day of trial and was sentenced to more than 20 years' imprisonment.

Opposing Counsel:

Howard McEachern, Esq.
9701 Apollo Drive, Suite 201
Largo, Maryland 20774
(301) 925-4069

Supervisor:

Michael Truscott (former Deputy Chief of Felony Major Crimes)
601 D Street NW
Washington, DC 20579
(202) 252-7223

5. *United States v. Kevin Jackson*, Case No. 2011CMD001769, Superior Court of the District of Columbia (2011) (before Judge Bruce S. Mencher)

Two officers from the Metropolitan Police Department were dispatched to a home for a person intoxicated and refusing to leave. Upon arrival, the officers asked Kevin Jackson to calm down, but he became increasingly upset. Jackson walked towards the officers in an aggressive manner, causing them to be forced out of the home. Once outside, Jackson told the officers, who were both female: "You'd better call some male officers! They know me! What are you gonna do, shoot me?" As Jackson made this statement, he placed his right hand behind his back and charged the officers. The officers drew their weapons and shot Jackson. Jackson was later charged with two counts of Assault on a Police Officer (Misdemeanor).

I was the lead prosecutor, and delivered the opening statement. I also conducted the direct examination of several witnesses, and presented evidence to show that Jackson's behavior constituted Assault on a Police Officer. After presenting the government's case and resting, Jackson pled guilty to the information.

Opposing Counsel:

Charles Canty, Esq.
1025 Connecticut Avenue NW, Suite 1012
Washington, DC 20036
(202) 857-1465

Mitchell Baer, Esq.
 717 D Street NW, Suite 310
 Washington, DC 20004
 (202) 347-1250

- 18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

As a prosecutor in the Fraud, Public Corruption and Civil Rights section, I have had the opportunity to pursue a diverse range of significant legal activities. For example, in 2017, I served as the lead prosecutor in the investigation of the Benefits Supervisor of Howard University's Benefit and Pension Administration who embezzled approximately \$420,128.28 from the Howard University Pension Plan. Investigating and successfully prosecuting those who violate the public's trust or violate civil rights statutes entails significant litigation that includes review and understanding of voluminous amounts of evidence, as well as numerous interviews and grand jury testimony of witnesses.

- 19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I have never held judicial office.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

- 20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

In 2017, I applied for a Magistrate Judge position with the Superior Court of the District of Columbia.

- 21. Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

None.

- **List all memberships and offices held in and services rendered to any political party**

or election committee during the last ten (10) years.

None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.**

To the best of my recollection, I have made the following political contributions of \$50 or more:

Joe Biden/Biden Victory Fund – \$118.16

Congresswoman Lauren Underwood – \$579.05

The Collective PAC – \$181.62

DC Councilmember Christina Henderson – \$100

Jaime Harrison for Congress – \$100

Raphael Warnock for Congress – \$100

Jon Ossoff for Congress – \$50

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

Yes, in the spring of 1993, while a freshman in college in Tallahassee, Florida, I wrote a check to a local grocery store for groceries that was returned for insufficient funds. At the time I wrote the check, I believed that the funds were in my bank account and that the check would clear my account. At some point after this transaction with the store, I went home to south Florida for summer break. After my transaction with the store, I did not receive notification from the store or the local authorities, which may have been sent to my former address in Tallahassee, that the check had been returned for insufficient funds. I also do not recall receiving notice of a transaction with insufficient funds from my bank.

It is my understanding that the store reported the incident to the local authorities and a misdemeanor charge for passing a worthless bank check was filed. I did not become aware of this until 1995, two years later, during a traffic stop when an officer from the Tallahassee Police Department informed me of the open case. The officer did not place me under arrest, instead, he instructed me to go to the Leon County Courthouse the following day to take care of the charge. I went to the courthouse the next morning to address the matter. Upon my arrival, I was informed that I was eligible for and would be

enrolled in a first-time offender diversion program. I completed the diversion program the following day. I do not specifically recall, but I may have also paid court costs associated with the case. This case was expunged in 2018.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

No.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

Yes. I will sever all connections with my present employer, and any business firms, associations, and organizations if I am confirmed.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

I have no financial arrangements, deferred compensation agreements, or continuing dealings with any law firm, business association or clients.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

I have no investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest if I am confirmed.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

I have had no business relationships, dealings, or financial transactions in the last ten years, neither for myself, nor on behalf of a client or as an agent, that could in any way constitute or result in a possible conflict of interest.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

I have had no activity in which I have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

I have no plans, commitments, or agreements to pursue outside employment during my service as a judge.

7. **Explain how you will resolve any potential conflicts of interest, including any that**

may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

If a conflict arises, I will turn to the District of Columbia Code of Judicial Conduct, the Code of Conduct for United States Judges, and any other applicable sources to resolve the conflict of interest.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501(b), as amended.

1. **Are you a citizen of the United States?**
Yes.
2. **Are you a member of the bar of the District of Columbia?**
Yes.
3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**
Yes. I was admitted to the DC Bar in January 2008, Bar No. 978769.
4. **If the answer to Question 3 is “no” --**
 - A. **Are you a professor of law in a law school in the District of Columbia?**
 - B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**
 - C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**
 - D. **Upon what grounds is that eligibility based?**
5. **Are you a bona fide resident of the District of Columbia?**
Yes.
6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**
Yes. Since January 2022, I have lived at [REDACTED]
[REDACTED]. From 2011-2021, I lived at [REDACTED]
[REDACTED]. **REDACTED**
7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

No.

- 8. Have you been a member of either of these Commissions within the last 12 months?**

No.

- 9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

A copy of my District of Columbia Judicial Nomination commission questionnaire is attached.

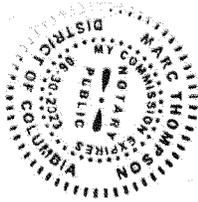
AFFIDAVIT

Kendra Davis Briggs being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Kendra D. Briggs

SUBSCRIBED and SWORN TO before me this 3 day of May 2022.

Marc Thompson
Notary Public



Senator Lankford
Post-Hearing Questions for the Record Submitted to Kendra D. Briggs

Nominations of Errol R. Arthur, Kendra D. Briggs, and Carl Ezekiel Ross to be
Associate Judges, Superior Court of the District of Columbia
Tuesday, July 12, 2022

On Judicial Philosophy:

- 1) How would you describe your judicial philosophy?

Response: Justice should be administered fairly and evenhandedly. The role of a judge is to understand the law, gather the facts, hear fairly from all parties, and then apply the law to the facts by rendering carefully reasoned opinions and rulings.

- 2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Response: A judge must understand and apply the applicable law to the facts of each case. I would set aside any personal views about the circumstances, and apply the law.

- 3) Should judges take changing social values into consideration when interpreting the law?

Response: No.

- 4) What role should extrinsic factors not included within the text of a statute, especially legislative history, and general principles of justice, play in statutory interpretation?

Response: Statutory interpretation starts with the plain meaning of the text of a statute. If there is ambiguity in statutory text, canons of construction and other accepted methods of statutory interpretation would apply.

- 5) What Judge or Justice do you most admire? Why?

Response: My mentor, retired Florida Supreme Court Justice Peggy A. Quince. Justice Quince spent 13 years as an assistant attorney general, and then made history by becoming the first black woman to serve on a district court of appeal in Florida. She later became the first black woman to be appointed to the Florida Supreme Court. Throughout her career as a dedicated public servant, she has been committed to candor, truthfulness, and professionalism, all qualities that anyone seeking judicial office, including myself should be committed to. I also witnessed firsthand her dedication and patience, and strive to emulate all these qualities in my career.

- 6) If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No. Race should not play a role in the sentencing of an individual defendant.

On Criminal Law:

- 1) What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area?

Response: The backlog of cases, due to the COVID-19 pandemic and vacancies on the Superior Court, is the most significant criminal issue currently in D.C. If I am fortunate enough to be confirmed, my experience with the laws of the District and practice in Superior Court will allow me to quickly get up to speed to assist with resolving the backlog.

- 2) What do you consider one of the most critical areas that you can serve D.C. while you're on the bench?

Response: If confirmed, the timely adjudication of cases by conducting fair and speedy trials is one of the most critical areas I can serve D.C. while on the bench.

On Evictions in DC:

- 1) At the outset of the pandemic, Congress included eviction protection in the CARES Act. When those protections expired, the CDC issued an eviction moratorium which took effect on September 4, 2020. That rule was challenged and reached the Supreme Court. On June 29, 2021 the Court left the moratorium in place, but noted that “congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31.” Despite the Supreme Court’s warning, President Biden attempted to extend the moratorium. On August 26, 2021, the Supreme Court vacated the moratorium because it exceeded CDC’s statutory authority. The District of Columbia provided eviction protection beyond that provided by the CDC – in March 2022 the City Council banned evictions over unpaid rent less than \$600.

- a. How will you balance the rights of landlords who have not received rent with the interests of tenants who seek a safe place to live?

Response: If confirmed, my goal will always be to make sure every litigant has a chance to be heard, and I would decide each case by applying the applicable law to the facts of the case.

- b. Will you apply the law to the facts, or will other consideration influence your decision making?

Response: I will look only at the applicable law in deciding cases, and set aside any other considerations when applying the law to the facts and rendering decisions.

On Religious freedom:

- 1) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector.

Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Response: If presented with this issue if I am confirmed as a judge, I would be bound by the Supreme Court’s binding precedent in *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), *Tandon v. Newsom*, 114 S. Ct. 1294 (2021), and other cases, as well as *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020).

- 2) The Mayor has a vaccine mandate in place for all city employees (including a required booster whenever eligible to receive one). If a case came before you where an employee was required to be vaccinated under the Mayor’s order but doing so would violate their sincerely held religious belief and that employee requested and was denied a reasonable accommodation, how would you approach such a case? What steps would you take in determining whether the employee should be granted an accommodation from the mandate?

Response: The Supreme Court has held that a judge should not question the sincerity of a person’s religious belief, the court’s “‘narrow function . . . is to determine’ whether the line drawn reflects ‘an honest conviction.’” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981)). If presented with this issue if I am confirmed as a judge, I would review the facts of the case before me and the binding precedent before rendering a decision.

**Post-Hearing Questions for the Record
Submitted to the Kendra Briggs
From Senator Josh Hawley**

July 12, 2022

- 1. During your time as a federal prosecutor, how many times have you recommended a sentence that was outside the Federal Sentencing Guidelines?**

- a. How many times did you recommend a sentence that was below the Guidelines?**

Response: Once that I recall, after the U.S. Attorney's Office for the District of Columbia Departure Committee authorized the filing of a motion for a downward departure under § 5K1.1 of the United States Sentencing Commission Guidelines Manual in a case where I served as the lead prosecutor. The defendant was charged with one count of Interstate Transport of Stolen Property, in violation of 18 U.S.C. § 2314. The approved downward departure was due to the nature and extent of the defendant's cooperation with the Government.

- b. How many times did you recommend a sentence that was above the Guidelines?**

Response: I do not recall ever recommending a sentence that was above the Guidelines.

- 2. Have you ever recommended a sentence that was more lenient than the one imposed by the judge? Please provide citations to all such cases.**

Response: I do not recall ever recommending a sentence that was more lenient than the one the Judge imposed.

- 3. Have you ever personally recommended a sentence that was more lenient than the sentence that the U.S. Attorney ultimately recommended to the judge? If so, how many times has this occurred?**

Response: I do not recall ever recommending a sentence that was more lenient than the sentence that the U.S. Attorney ultimately recommended to the Judge.

- 4. Have you ever prosecuted an individual for a crime related to child pornography? If so, please provide citations.**

Response: I have never prosecuted an individual for a crime related to child pornography.

5. When, if ever, do you believe it is appropriate for a judge to deviate from the Guidelines?

Response: A judge “shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.” 18 U.S.C. § 3553(b).

6. The First Amendment of the United States Constitution protects the free exercise of religion.

a. Under Supreme Court and District of Columbia precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Supreme Court has stated that a law that burdens religious practice that is not neutral or not of general applicability is subject to strict scrutiny. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993) (“[a] law burdening religious practice . . . must undergo the most rigorous of scrutiny.”). D.C. is also a covered entity under the Religious Freedom Restoration Act (“RFRA”) 42 U.S.C. § 2000bb-2(2), and the application of the standard outlined in *Capitol Hill Baptist Church v. Dist. of Columbia*, 496 F.Supp. 3d 284 (D.D.C. 2020) also applies.

b. Under Supreme Court and District of Columbia precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my response to 6.a.

c. What is the standard in the District of Columbia for evaluating whether a person’s religious belief is held sincerely?

Response: The Supreme Court has held that a judge should not question the sincerity of a person’s religious belief, the court’s “‘narrow function . . . is to determine’ whether the line drawn reflects ‘an honest conviction.’” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981)).

7. What is your understanding of the Supreme Court’s holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*, No.20–843 (2022)?

Response: The Supreme Court held that New York’s “proper cause” standard violated the Second Amendment as incorporated by the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2125-2156 (2022).

8. Please state whether you agree or disagree with the following statement and explain why: “Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted.”

Response: I agree. Statutory interpretation starts with the plain meaning of the text of a statute. *See Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

9. What is your understanding of the holding of *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993)?

Response: “[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993). However, a law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. *Id.*

10. Have you ever publicly advocated in favor of abortions or pro-choice policy positions? If so, please explain and include relevant citations.

Response: No.

11. Do you believe that America is systemically racist?

Response: If I am confirmed as a judge, my job would be to treat every individual who appears before me fairly, and evaluate any claims of racial discrimination by reviewing the facts of each case, the Constitution, and applicable laws.

12. Have you ever worked on a legal case or representation in which you opposed a party’s religious liberty claim? If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to all such the cases.

Response: No.

13. What role should the original public meaning of the Constitution’s text play in the courts’ interpretation of its provision

Response: The Supreme Court has stated that “the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation.” *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis omitted).

14. Under U.S. Supreme Court precedent and applicable District of Columbia cases, what is the standard for evaluating an individual’s right to refuse a compelled DNA test?

Response: In *Maryland v. King*, 569 U.S. 435 (2013), the Supreme Court explained that a compelled DNA test is a “search” within the meaning of the Fourth Amendment. *Id.* at 446. “[T]he ‘touchstone of the Fourth Amendment is reasonableness [.]’” *Id.* at 448. See also *In re G.B.*, 139 A.3d 885, 897-98 (D.C. 2016).

15. Please provide citations or supply copies of any speeches, articles, or tweets in which you have addressed criminal justice reform.

Response: I have not addressed criminal justice reform in any speech, article, or tweet.

Opening Statement of Errol R. Arthur
Nominee to be an Associate Judge of the Superior Court of the District of Columbia
July 12, 2022

Chairman Peters, Ranking Member Portman, and members of the Committee, I am both honored and humbled to appear before you today as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank the Committee's staff for all of its hard work and dedication in preparing for this hearing.

I thank President Joseph R. Biden for nominating me. I thank all of the members of the District of Columbia Judicial Nomination Commission, specifically its Chair, the Honorable Emmet Sullivan for recommending me to the White House. I also thank Chief Judge Anita Josey-Herring, and former Chief Judges Robert Morin and Lee Satterfield for their leadership and guidance.

I am blessed to come from a very large, loving and supportive family many of whom are watching online. This includes my sisters Sheyna Arthur and Justine Jaquez, brothers in-law Antonio Beatty and Justin Jaquez, nephews Jeromy and Jacob Jaquez, and mother in-law Wynell Beatty. My grandparents, John and Esther Sewchand and Priscilla Arthur are here in spirit as well.

I am thrilled that my parents, Errol and Violet Arthur, are watching from their home. They left their native Guyana over 50 years ago and settled just outside of Washington, D.C. In raising my two sisters and me, they instilled in each of us the importance of hard-work, family, and community service. It was with their unwavering support and encouragement that I devoted my life to public service.

I reserve a special acknowledgment to my partner and biggest cheerleader, the Honorable Sherri Beatty-Arthur, my wife. For over 27 years she has been my rock. I am especially proud to be joined by my son, Miles Arthur, a recent graduate of Morehouse College, and daughter, Layla Arthur, a rising sophomore at Spelman College. I consider Miles and Layla to be my greatest accomplishments, and it is a great joy to watch them in their own journeys.

It is certainly a great honor to be considered for Associate Judge on the Court where I have worked for nearly 25 years. I have been a Magistrate Judge since 2010, serving in the Family, Criminal, and Domestic Violence Divisions, where I have presided over thousands of cases in some of the Court's highest volume calendars. From 2016 to 2021, I served as the Deputy Presiding Magistrate Judge and Presiding Magistrate Judge where I served on the Chief Judges' Leadership teams, and covered cases in all divisions of the Court. I began my career at the Superior Court serving as a judicial law clerk to the Honorable Mary A. Gooden Terrell. After my clerkship, I served as a staff attorney with the Public Defender Service for the District of Columbia where I represented juveniles and adults in matters in the Superior Court, Department of Youth Rehabilitation Services, and U.S. Parole Commission. I then formed my own law practice where I worked until my appointment to the bench.

I was born in this great city, and this is my home. It has been an honor to serve the citizens of Washington, D.C. throughout my career. I am humbled by the opportunity, if confirmed, to be an Associate Judge and to continue to serve my community and the Court that I have been a part of for decades. I look forward to answering any questions you may have. Thank you.

REDACTED

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
UNITED STATES SENATE**

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**
Errol Rajesh Arthur
2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**
I am a citizen of the United States.
3. **Current office address and telephone number.**
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Chambers 4450
Washington, D.C. 20001
(202) 879-4793
4. **Date and place of birth.**
January 15, 1972; Washington, D.C.
5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**
I am married to Sherri Malloy Beatty-Arthur, Magistrate Judge, Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001. Her maiden name was Sherri Malloy Beatty.
6. **Names and ages of children. List occupation and employer's name if appropriate.**
Miles Rajesh Arthur, age 22. He graduated from Morehouse College in May 2022.
Layla Imani Arthur, age 19. She is a student at Spelman College in Atlanta, Georgia.
7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**
Howard University School of Law, 1995 – 1998. Juris Doctor awarded 1998.

University of Maryland at College Park, 1990 – 1994. Bachelor of Arts awarded 1994.

St. John's College High School, 1986 – 1990. High School Diploma awarded 1990.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

1997
 United States Department of Labor
 Office of Congressional and Intergovernmental Affairs
 200 Constitution Avenue, N.W.
 Washington, D.C. 20210
 Legislative Aide

1996 – 1997
 Howard University School of Law
 2900 Van Ness Street, N.W.
 Washington, D.C. 20008
 Research Assistant for Professor Peter Krauthamer

1994 – 1997
 Phillip's Flagship Restaurant (no longer operational)
 900 Water Street, S.W.
 Washington, D.C. 20024
 Server

1996
 Office of the State's Attorney for Baltimore City
 120 East Baltimore Street, 9th Floor
 Baltimore, Maryland 21202
 Law Clerk

1994 – 1995
 Norell Temporary Services
 10700 Parkridge Boulevard, Suite 420
 Reston, Virginia 20191
 Temporary Employee

1994 – 1995
 A.A. Temporary Services
 7002 North Little River Turnpike
 Annandale, Virginia 22003
 Temporary Employee

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Washington Bar Association, Service Award (2021)

Washington Bar Association, President's Award (2020)

Office of Youth Ministry/Catholic Youth Organization Outstanding Coach Award, Archdiocese of Washington, (2014)

Criminal Justice Coordinating Council Award in Recognition of Commitment and Dedication to Truancy Court Diversion Program (2013)

Volunteer of the Year, Annunciation Catholic School (2013)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

None.

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Washington Bar Association

Co-Chair, Judicial Internship Program (2015 – present)

Member, Judicial Council Executive Committee (2012 – present)

Member, Judicial Council (2010 – present)

Board of Directors (2012 – 2014, 2020– 2021)

Chair, Judicial Council (2012 – 2014, 2020 – 2021)

Chair, Judicial Council Symposium Committee (2011 – 2012)

Financial Secretary, Judicial Council (2016 – 2017)

National Bar Association

Member, Judicial Division (2020 – present)

National Association of Juvenile and Family Court Judges

Member (2010 – 2013)

Superior Court Trial Lawyers Association

Member (2007 – 2010)

Superior Court of the District of Columbia Committees

Member, Criminal Justice Act Panel Committee (2022 – present)
 Member, Committee on Art Installation (2022 – present)
 Member, Joint Committee on Workplace Conduct (2020 – present)
 Member, Committee on Judicial Education & Training (2020 – present)
 Member, Committee on Amenities & Misfortunes (2020 – 2021)
 Member, Committee on Pretrial Mental Health Examinations and Urgent Care Clinic (2018 – 2019)
 Co-Chair, Criminal Division C-10 Working Group (2017 – present)
 Co-Chair, Family Court Education Sub-Committee (2012 – 2016)
 Member, Family Court Rules Committee (2016)
 Member, Family Court JM-15 Working Group (2014 – 2016)
 Member, Family Court Implementation Committee (2012 – 2016)
 Member, CCAN Practice Standards Working Group (2011 – 2013)
 Member, Family Court Neglect Court Orders Working Group (2012 – 2013)
 Member, Family Court Education Sub-Committee (2010 – 2011)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Sigma Delta Tau Legal Fraternity
 Member (1996 – present)

Sigma Delta Tau Fraternity limits membership to males, however there is a corresponding sorority—Epsilon Sigma Iota.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

Maryland
 Admitted 1998

District of Columbia
 Admitted 2000

From October 3, 2006 to October 23, 2006, I was administratively suspended for failure to pay my District of Columbia dues. I did not receive the invoice from the D.C. Bar in the mail. However, once I became aware of the issue, I immediately paid my outstanding dues and was reinstated. Otherwise, there have been no lapses in membership.

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

From September 1995 to May 1998, I served as an Editor, Copy Editor, and Editor in Chief for *The Barrister Newspaper* at the Howard University School of Law. I wrote numerous articles, however, I do not have copies of the articles.

From September 1992 to May 1994, I was a staff writer and Managing Editor for *The Black Explosion Newspaper* at the University of Maryland. I wrote numerous articles, however, I do not have copies of the articles.

From September 1992 to May 1993, I was a staff writer for *The Eclipse Newspaper* at the University of Maryland. I wrote numerous articles, however, I do not have copies of the articles.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

March 23, 2022: Panelist, "A Conversation with the Judges," Howard University School of Law, Washington, D.C. (Via Zoom). I have no notes, transcript, or recording.

November 18, 2019: Panelist, "An Evening with the Judges," District of Columbia Court of Appeals, Washington, D.C. I have no notes, transcript, or recording.

October 23, 2019: Panelist, "The Conundrum of the Black Prosecutor: Can I Cheer On & Charge My People At the Same Time?" National Black Prosecutors Association Eastern Region, American University, Washington College of Law, Washington, D.C. I have no notes, transcript, or recording.

June 5, 2018: Panelist, Domestic Violence Bench-Bar Dialogue, Superior Court of the District of Columbia, Washington, D.C. I have no notes, transcript, or recording.

October 14, 2017: Panelist, Robert E. Wone Judicial Clerkship and Internship Conference, Washington, D.C. I have no notes, transcript, or recording.

16. Legal career.

A. Describe chronologically your law practice and experience after graduation from law school, including:

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

From September 1998 until September 1999, I served as a law clerk for the Honorable Mary A. Gooden Terrell in the Superior Court of the District of Columbia.

(2) Whether you practiced alone, and if so, the addresses and dates;

2002 – 2004
The Law Office of Errol Arthur
1717 K Street, N.W., Suite 600
Washington, D.C. 20036
Solo Practitioner

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

1999 – 2002
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Staff Attorney, Trial Division (1999)
Staff Attorney, Juvenile Division (1999 – 2000)
Staff Attorney, General Felony Division (2000 – 2002)

2004 – 2010
Arthur & Arthur, P.L.L.C.
3617 14th Street, N.W.
Washington, D.C. 20010
Partner

2008 – 2010
District of Columbia Board of Elections and Ethics
1015 Half Street, S.E., Suite 750 North
Washington, D.C. 20003
Board Member

2008
Howard University School of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008
Adjunct Professor

2010 – present
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Chambers 4450
Washington, D.C. 20001
Magistrate Judge

2014 – 2022

Harvard Law School
Winter Trial Advocacy Workshop
Cambridge, Massachusetts 02138
Adjunct Faculty Member

2022
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Adjunct Professor

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

After graduating from Howard University School of Law in 1998, I served as a Law Clerk for the Honorable Mary A. Gooden Terrell of the D.C. Superior Court. From October 1998 until December 1998, Judge Terrell presided over a misdemeanor calendar. During this period, I had the opportunity to observe criminal bench trials. In January 1999, Judge Terrell transitioned to a felony calendar, which provided me with the opportunity to observe jury trials. Additionally, Judge Terrell presided over an abuse and neglect calendar, where she presided over regularly scheduled permanency hearings and review of disposition hearings.

In October 1999, I became a staff attorney in the Trial Division for the Public Defender Service for the District of Columbia. After completing an intensive ten-week training program, I was assigned to the Juvenile Division in December 1999, during which time I represented indigent clients in delinquency proceedings in the D.C. Superior Court and in administrative hearings before the Department of Youth Rehabilitation Services. In December 2000, I transferred to the General Felony Trial Division, where I represented indigent adult clients in the D.C. Superior Court and in administrative hearings before the United States Parole Commission.

In November 2002, I started my own law practice, the Law Office of Errol Arthur, where I was a solo practitioner. I represented clients in criminal, family, civil, and administrative matters in the District of Columbia and Maryland. During this time, I was also selected as a member of the Council for Child Abuse and Neglect and Juvenile Panels of the D.C. Superior Court. Membership on these panels enabled me to be appointed by the Court to represent indigent parties in both neglect and juvenile delinquency proceedings. I was also selected as a member of the D.C. Superior Court's Criminal Justice Act Panel, which enabled me to be appointed by the Court to represent indigent defendants in criminal proceedings.

In August 2010, I was appointed as a Magistrate Judge of the D.C. Superior

Court. From August 2010 to December 2014, I was assigned to an Abuse and Neglect calendar in the Family Court. My duties included presiding over abuse and neglect, adoption, guardianship, termination of parental rights, and custody matters. From January 2015 to December 2016, I was assigned to the Juvenile Delinquency New Referrals calendar where my duties included presiding over initial hearings in juvenile delinquency matters; presiding over probable cause hearings; and making decisions regarding placement and conditions of release. From January 2017 to December 2018, I was assigned to the Arraignments and Preliminary Hearings calendars in the Criminal Division, and to the Domestic Violence calendar in the Domestic Violence Division. From January 2019 to December 2021, I served as the Presiding Magistrate Judge. In this capacity, I provided back-up to all Magistrate Judges in all divisions of the court. Since January 2022, I have been assigned to the Criminal Division and Domestic Violence Divisions of the Court. In this capacity, I have presided over the Arraignments and Preliminary Hearings calendars in the Criminal Division, and to the Domestic Violence calendar in the Domestic Violence Division.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

I joined the Public Defender Service for the District of Columbia in October 1999 as a staff attorney. During my tenure at the Public Defender Service, I served in the Juvenile Division and the General Felony Division. My clients were indigent respondents and defendants who were charged with committing criminal offenses in the District of Columbia.

In November 2002, I started the Law Office of Errol Arthur, where I was a solo practitioner. Initially, I represented retained clients in criminal, family, civil, and administrative matters in the District of Columbia and in Maryland. In 2003, I became a member of the Juvenile and Counsel for Child Abuse and Neglect Panels, which increased my caseload, and court appearances. In 2004, I became a member of the Criminal Justice Act Panel. As a result, most of my cases came through court appointments and most of my clients were indigent. Also, I represented retained clients in civil, small claims, personal injury, and landlord-tenant matters before the D.C. Superior Court, District and Circuit Courts throughout Maryland, and in administrative matters before agencies such as the District of Columbia Department of Employment Services, United States Department of Labor, Maryland Motor Vehicle Administration, and the District of Columbia Department of Motor Vehicles. In April 2004, I converted my solo-practice into a partnership, Arthur & Arthur, PLLC, with my wife, Sherri Beatty-Arthur. Following the creation of Arthur & Arthur, I limited the scope of my practice to criminal, juvenile and family law matters until my appointment to the bench as a Magistrate Judge in August 2010.

D. Describe the general nature of your litigation experience, including:

- (1) **Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

From 1999 to 2002, when I worked for the Public Defender Service for the District of Columbia as a staff attorney, my court appearances were frequent, almost daily. In 2002, when I left the Public Defender Service to start my own law practice, initially, my court appearances decreased. However, as my client base grew so did my number of court appearances, and on average, I appeared in court daily.

- (2) **What percentage of these appearances was in:**

- (a) **Federal courts (including Federal courts in D.C.)**
0 %
- (b) **State courts of record (excluding D.C. courts);**
5 %
- (c) **D.C. courts (Superior Court and D.C. Court of Appeals only)**
94 %
- (d) **other courts and administrative bodies.**
1 %

- (3) **What percentage of your litigation has been:**

- (a) **civil;**
10 %
- (b) **criminal.**
90 %

- (4) **What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

During my tenure as a litigator, I estimate that I tried approximately 51

cases to verdict or judgement, 50 as lead counsel, and 1 as associate counsel.

(5) What percentage of these trials was to

(a) a jury;

14 %

(b) the court (include cases decided on motion but tabulate them separately).

86 %

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. *United States v. Calvin Bigesby*, No. 2006 CF3 17481 (Superior Court of the District of Columbia) (before the Honorable Herbert B. Dixon Jr.)

Mr. Bigesby and his co-defendant were charged with multiple counts of armed robbery and related charges. Mr. Bigesby was also charged with an additional count of obstruction of justice. I served as trial counsel for Mr. Bigesby from 2006 to 2007.

The case involved an alleged armed robbery of patrons in a restaurant. Mr. Bigesby was arrested months after the incident, whereas his co-defendant was arrested shortly after the robbery. Following his arrest, Mr. Bigesby's co-defendant told law enforcement that he and Mr. Bigesby were in the restaurant and that they were forced to participate in the robbery by other individuals. Following my appointment to the case, I, along with an investigator, canvassed the crime scene tirelessly, interviewed scores of potential witnesses, including the workers in the restaurant and Mr. Bigesby's family members, and worked closely with the co-defendant and his counsel. After fully investigating the background of the government's primary witness, we found out that the witness had received a significant amount of financial support from the government, which we presented to the jury. Based on our investigation of the case, we also impeached the government's primary witness on her statements to law enforcement. The jury acquitted Mr. Bigesby and his co-defendant on all charges.

Co-Counsel:

The Honorable Amit P. Mehta (Counsel for Co-Defendant)
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 354 - 3250

Opposing Counsel:

Jeffrey Pearlman, Esq.
United States Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530
(202) 514-1026

2. *United States v. Randall Mack*, 2000 FEL 524, (Superior Court of the District of Columbia) (before the Honorable Judith E. Retchin)

Mr. Mack and a co-defendant were charged with first-degree murder while armed, carrying a pistol without a license, and related charges stemming from the shooting death of the victim. From 2000 to 2001, I served as junior co-counsel with PDS staff attorney, Marlon Griffith.

The case required an immense amount of investigation. In addition to canvassing the crime scene on numerous occasions, Mr. Griffith and I also interviewed scores of witnesses. Through our investigation, we learned the identity of two unidentified eyewitnesses to the shooting. During the course of our investigation, we also identified an alibi witness in Mr. Mack's defense. Prior to the start of the trial, I drafted and argued all pre-trial suppression motions. During the trial, I gave the opening statement on behalf of Mr. Mack, cross-examined government witnesses, and conducted direct examinations of defense witnesses. At the conclusion of the trial, the jury convicted Mr. Mack and his co-defendant on all charges. Following the jury's verdict, in addition to reviewing the pre-sentence report, I drafted a sentencing memorandum, and made the sentencing argument on behalf of Mr. Mack. After I left the Public Defender Service of the District of Columbia, Mr. Mack's conviction was appealed. The District of Columbia Court of Appeals reversed Mr. Mack's conviction and remanded the case for a new trial in *Andrews v. United States*, 922 A.2d 449 (2007).

Co-Counsel:

Marlon Griffith, Esq. (Co-Counsel for Mr. Mack)
Griffith & Wheat, P.L.L.C.
1050 17th Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 496-4963

Jenifer Wicks, Esq. (Co-Counsel for Mr. Mack's Co-Defendant)
Law Offices of Jenifer Wicks
The Jenifer Building
400 7th Street, N.W.
Suite 202
Washington, D.C. 20004
(202) 393-3004

Opposing Counsel:
Glenn Kirschner, Esq.
George Washington University
801 22nd Street N.W., Suite 409
Washington, DC 20052
(202) 994-6345

Alexandre H. Rene, Esq.
Ropes & Gray (current)
700 12th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 508-4812

3. *United States v. Prince Romney Makonnen*, No. 2007 CF3 11083, (Superior Court of the District of Columbia) (before the Honorable Harold L. Cushenberry Jr.)

Mr. Makonnen and three co-defendants were charged by felony complaint with armed robbery of a jewelry store. From 2007 to 2008, I served as Mr. Makonnen's primary counsel.

I conducted an intensive investigation of the case in anticipation of a complex trial that included reviewing the records of Mr. Makonnen's co-defendants, reviewing the video of the robbery, and interviewing witnesses. Because it was alleged that Mr. Makonnen, a resident of New Jersey, drove from New Jersey to Washington, D.C. with the goal of robbing the jewelry store, I also conducted extensive legal research on extradition and severance and engaged in extensive negotiations with the prosecutor and Mr. Makonnen's attorney in New Jersey. As a result, Mr. Makonnen accepted a plea agreement, and as part of the agreement, Mr. Makonnen agreed to testify against two of his co-defendants prior to his own sentencing. Following an extensive sentencing hearing, Judge Cushenberry imposed a sentence of five years.

Opposing Counsel:
Timothy Lucas, Esq.
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530

(202) 252-7566

4. *In re S.B.*, Confidential Neglect Case No., (Superior Court of the District of Columbia) (before the Honorable Michael Ryan)

S.B. was the subject of a neglect petition which alleged that he was neglected by his mother. I was appointed by the court to represent S.B. because there was a conflict between he and his guardian ad litem. I represented S.B. during all phases of the neglect proceedings from 2004 to 2008. This included the fact-finding hearing where the court adjudicated him neglected. In preparation for the hearing, I consulted extensively with S.B., all counsel, and witnesses. I also conducted my own investigation into the government's allegations as well as any defenses by his mother. I also consulted S.B. on whether he wished for me to examine any of the witnesses. Following the disposition in the case, I consulted with S.B. and advocated on his behalf before the court during numerous review hearings on issues related to his placement, appropriate services, and potential visitation with his mother. I represented S.B. and his interests during emergency and evidentiary hearings which were set by the court. I also visited S.B. on many occasions outside of court to ensure that his needs and interest were being addressed.

Parties:

Denise McCoy, Esq. (Counsel for the District of Columbia)
Office of the Attorney General for the District of Columbia
400 6th Street, S.W., 5th Floor
Washington, D.C. 20024
(202) 727-3400

Anne Schneiders, Esq. (Guardian Ad Litem)
2828 Wisconsin Avenue, N.W., Suite 314
Washington, D.C. 20036
(301) 363-7916

Cynthia Jefferson, Esq. (Counsel for S.B.'s Mother)
715 8th Street, S.E.
Washington, D.C. 20003
(202) 737-0111

5. *Starlet H. Jacques v. Alain Jacques*, No. 32398FL, (Montgomery County Circuit Court) (before the Honorable Nelson W. Rupp)

From 2003 to 2004, I represented the plaintiff, Ms. Jacques in her complaint for an absolute divorce and restoration of her maiden against her husband, Mr. Jacques. Mr. Jacques opposed the complaint and the issue before the court was whether Ms. Jacques could establish that there were sufficient grounds to grant her complaint.

I represented Ms. Jacques during all stages of the proceedings. I engaged in

discovery and engaged in settlement negotiations with Mr. Jacques and his counsel. I also conducted my own investigation into Ms. Jacques's claims to determine if she would prevail at a contested trial. Additionally, I spent extensive time prepping Ms. Jacques and her witness for testimony before the court. During the trial, neither Mr. Jacques nor his counsel appeared. However, Mr. Jacques requested that the court postpone the matter. I objected for the record which the court sustained. The court heard testimony from Ms. Jacques and her witness. The court credited Ms. Jacques's and the witness's testimony and ruled that there was a sufficient basis to grant the complaint for absolute divorce and restore her maiden name.

Opposing Counsel:

Jo Benson Fogel, Esq. (Withdrawn as Counsel Before Trial)
5900 Hubbard Drive
Rockville, MD 20852
(301) 468-2288

- 18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

Since October 2010, I have been a member of the Washington Bar Association's Judicial Council. From 2012 to 2014 and from 2020 to 2021, I served as the Chair of the Judicial Council and as a member of the Washington Bar Association's Board of Directors. Also, in 2012 I served as the Chair of the Washington Bar Association's Judicial Council's Symposium Committee which presented a symposium entitled, "The 13th Juror, Litigation in the Age of Facebook, Twitter, and YouTube." The symposium examined the impact of social media on trials. As Chair of the Committee, I took the lead role in identifying the topic and assembling the panel which included representatives from the bench, defense bar, prosecution, media, and academia. Lastly, since 2016 I have served as Co-Chair of the Washington Bar Association's Annual Summer Internship Program.

During the 2012 and 2013 school years, I and other judges from the D.C. Superior Court volunteered to serve as presiding judges in local schools to provide monitoring for students who have been identified as being truant from school. I was assigned to the John Hayden Johnson Middle School in Washington D.C. The program took place before school hours and allowed students and their families to meet with school officials, social workers (if necessary), and community representatives, in order to address the causes for their truancy. When appropriate, recommendations were made for improvements. Each week and before the start of classes, I met with the parties, and monitored their progress with school attendance and academic performance.

Since 2014, I have served as a member of the visiting faculty for Harvard Law School's Winter Trial Advocacy Workshop. For one week, I along with other volunteer trial attorneys and judges assist in teaching law students all aspects of trial practice including

opening statements, development of witness testimony on direct and cross examination use of illustrative aids and exhibits in evidence, impeachment, expert testimony and summations. My fellow faculty members and I also evaluated and critiqued the students during simulated exercises. Moreover, at the end of the week-long session my colleagues and I presided over mock trials in local courthouses.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

Yes. In August 2010, I was appointed as a Magistrate Judge in the Superior Court of the District of Columbia. Since my appointment to the bench, I have been assigned to the Family Court, Criminal Division, and Domestic Violence Division. Copies of my published opinions are attached.

- A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

In the Petition of J.O. and P.O., 16-FS-945 & 16-FS-946 (December 12, 2017). The District of Columbia Court of Appeals held that I erred in granting the adoption petition by a birth mother's designees because the birth mother was not competent to designate a preferred caregiver under D.C. Code §§ 16-304 (a), (b). The Court held that given the birth mother's mental health history she could not make a determination about what was in her child's best interest and plan for her child's future under the termination of parental rights facts as outlined in D.C. Code § 16-2353.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

21. **Political activities and affiliations.**

- A. **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

I was nominated by Mayor Adrian Fenty in or around February 2008, and confirmed by the Council of the District of Columbia in April 2008 as one of three board members of the District of Columbia Board of Elections and Ethics. In May 2008, I was appointed as its Chair, and served in that role until my appointment as a Magistrate Judge in August 2010.

- B. **List all memberships and offices held in and services rendered to any political**

party or election committee during the last ten (10) years.

~~to any committee, club, association, or membership, held any offices, or rendered any services to any political party or election~~
I have not had any memberships, held any offices, or rendered services to any political party or election committee in the last ten years.

C. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

I have not made any political contributions in the past five years.

- 22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

Yes. In March 1998, I was arrested and charged with driving under the influence of alcohol in Montgomery County, Maryland. In July 1998, the State's Attorney Office for Montgomery County dismissed the case by entering a *nolle prosequi* in the matter. The matter was later expunged. I also appeared for an administrative hearing before the Maryland Motor Vehicles Administration which resulted in a "no finding" by the hearing examiner.

- 23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

In March 1998, I was arrested and charged with driving under the influence of alcohol in Montgomery County, Maryland. In August 1998, I appeared for an administrative hearing before the Maryland Motor Vehicles Administration. The hearing examiner made a "no finding" following an evidentiary hearing, and my driver's license was reinstated.

- 24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.

II. POTENTIAL CONFLICTS OF INTEREST

- 1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

I severed all connections with my former employer, and any business firms, associations, and organizations when I was appointed as a Magistrate Judge.

- 2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

I have no financial arrangements, deferred compensation agreements, or continuing dealings with any law firm, business association or clients.

- 3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

I have no investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest if I am confirmed.

- 4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

I have had no business relationships, dealings, or financial transactions in the last ten years, for myself, nor on behalf of a client or as an agent, that could in any way constitute or result in a possible conflict of interest.

- 5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

From April 2008 to July 2010, I was a member of the District of Columbia Board of Elections and Ethics. As a board, one of our responsibilities was to address proposed amendments or changes to Title 3 of the District of Columbia Code of Municipal Regulations, which governed elections in the District of Columbia. Once an amendment to a regulation is proposed, and after considering all arguments and comments, the board would then vote to either adopt or reject the proposed amendment(s) during public monthly board meetings.

- 6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

Besides teaching, I have no plans, commitments, or agreements to pursue outside employment during my service as a judge.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

I have no potential conflicts of interest that I need to resolve. If a conflict arises, I will turn to the District of Columbia Code of Judicial Conduct, and any other applicable sources to resolve the conflict of interest.

8. **If confirmed, do you expect to serve out your full term?**

Yes.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11 - 150 1 (b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to the District of Columbia bar on January 10, 2000.

4. If the answer to Question 3 is "no" --

A. Are you a professor of law in a law school in the District of Columbia?

B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

D. Upon what grounds is that eligibility based?

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Yes. I have lived at [REDACTED] since January 1999. REDACTED

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

- 8. Have you been a member of either of these Commissions within the last 12 months?**

No.

- 9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

I have provided four (4) copies of my District of Columbia Judicial Nomination commission questionnaire.

AFFIDAVIT

Errol R. Arthur being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

 5/2/22

SUBSCRIBED and SWORN TO before me this _____ day of _____ 2022

City/County of CLARIS Notary Public
State of Maryland

Subscribed and sworn to before me
this 2nd day of May 2022
by S.A.M. Kelley Notary Public
My commission expires 9/22/2025



**Senator Lankford
Post-Hearing Questions for the Record
Submitted to Errol R. Arthur**

**Nominations of Errol R. Arthur, Kendra D. Briggs, and Carl Ezekiel Ross to be Associate
Judges, Superior Court of the District of Columbia
Tuesday, July 12, 2022**

On Judicial Philosophy:

- 1) How would you describe your judicial philosophy?

Response: My judicial philosophy is centered on fairness. This requires that I be patient, give each party a full opportunity to be heard, assess each case individually, and make decisions solely on the merits of the case in accordance with the law.

- 2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Response: As a Magistrate Judge, I always apply the law to the facts. My personal views do not play a role in my decisions. I will continue this approach if I were confirmed as an Associate Judge.

- 3) Should judges take changing social values into consideration when interpreting the law?

Response: No.

- 4) What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory in, and interpretation?

Response: The text is the primary factor in statutory interpretation. The analysis ends if the plain meaning of the text is unambiguous. However, if the text is ambiguous or not clear and if there is no applicable court precedent, then I would employ the appropriate methods of statutory interpretation and canons of construction.

- 5) What Judge or Justice do you most admire? Why?

Response: I admire Judge Gregory Jackson, a retired D.C. Superior Court Associate Judge. I appeared before Judge Jackson many times as an attorney and worked with him when I was appointed as a Magistrate Judge. He consistently exhibited excellent judgment, calm temperament, patience, and thoroughness in explaining his decisions to parties when rendering judgment. I have sought to emulate these characteristics during my time on the bench and will do so if confirmed.

- 6) If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No. A defendant's race or disparities in sentencing do not influence my sentencing decision. Sentencing of individual defendants must be done on a case by case basis, and the court must only consider the relevant sentencing factors.

On Criminal Law:

- 1) What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area?

Response: The most significant criminal issues in the District of Columbia are the backlog of criminal cases and the effects it has had on the court's operations. The longer a case takes to resolve delays the administration of justice because there is no resolution for the victims of the crime, it creates uncertainty to defendants, and affects the community's confidence in the court system. I have been a Magistrate Judge for over 11 years and served in the Criminal Division for over five years. In that time, I have presided over arraignments, detention hearings, preliminary hearings, pleas, and sentencing. If assigned to the Criminal Division, I will use my experience in the Criminal Division to assist my colleagues in addressing the backlog, and then address cases fairly and efficiently.

- 2) What do you consider one of the most critical areas that you can serve D.C. while you're on the bench?

Response: I will use my years of experience as a Magistrate Judge and knowledge of the District of Columbia law and court processes to assist in addressing the backlog of cases, adjudicating cases, and assisting my fellow judicial officers.

On Evictions in DC:

1) At the outset of the pandemic, Congress included eviction protection in the CARES Act. When those protections expired, the CDC issued an eviction moratorium which took effect on September 4, 2020. That rule was challenged and reached the Supreme Court. On June 29, 2021 the Court left the moratorium in place, but noted that "congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31." Despite the Supreme Court's warning, President Biden attempted to extend the moratorium. On August 26, 2021, the Supreme Court vacated the moratorium because it exceeded CDC's statutory authority. The District of Columbia provided eviction protection beyond that provided by the CDC – in March 2022 the City Council banned evictions over unpaid rent less than \$600.

- a. How will you balance the rights of landlords who have not received rent with the interests of tenants who seek a safe place to live?

Response: During my tenure as a Magistrate Judge, I have applied the law to the individual facts of each case when I presided over landlord and tenant cases. I would continue to do so if confirmed to be an Associate Judge.

- b. Will you apply the law to the facts, or will other consideration influence your decision making?

Response: I will only apply the law to the facts of the case. Other considerations will not influence my decision making.

On Religious freedom:

1) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector.

Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Response: If confirmed as an Associate Judge, and assigned to a case where parties are stating a claim under RFRA, I would apply the facts of the case to that law and issue a ruling consistent with Supreme Court and District of Columbia Court of Appeals precedent. *See, e.g., Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (“government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.”) (citations omitted); *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020).

2) The Mayor has a vaccine mandate in place for all city employees (including a required booster whenever eligible to receive one). If a case came before you where an employee was required to be vaccinated under the Mayor’s order but doing so would violate their sincerely held religious belief and that employee requested and was denied a reasonable accommodation, how would you approach such a case? What steps would you take in determining whether the employee should be granted an accommodation from the mandate?

Response: If a case such as this were assigned to me, I would only consider only the binding precedent of the United States Supreme Court and the District of Columbia Court of Appeals. The District of Columbia is a covered entity under the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.* As such, I would apply Supreme Court precedents that have interpreted RFRA. *See, e.g., Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Burwell v. Hobby Lobby Stores Inc.*, 573 U.S. 682 (2014). I would also consider the

precedent set forth in *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), and *Tandon v. Newsom*, 114 S. Ct 1294 (2021).

**Post-Hearing Questions for the Record
Submitted to the Honorable Errol Arthur
From Senator Josh Hawley**

July 13, 2022

1. The D.C. Court of Appeals reversed your opinion in *In the Petition of J.O. and P.O.*, 16-FS-945 (December 12, 2017). What is your understanding of the basis for your initial disposition and what is your understanding of the court's disagreement with your analysis?

Response: This matter involved competing adoption petitions between two parties, the O.s and W.s. The birth mother, K.S., after consulting with her counsel, executed and filed a consent to adoption of the W.s consistent with the District of Columbia Superior Court's rules governing adoption proceedings. During the bench trial, I considered the evidence, arguments of counsel, and applicable law. Based on the evidence presented, I determined that there was insufficient evidence to waive the birth mother's consent. Specifically, I found that it was not established that she was incompetent at the time she executed her consent. Based on this finding and applying the "weighty consideration" doctrine, I gave K.S.'s choice of caregiver weighty consideration and required the other party (the O.s) to prove by clear and convincing evidence that placement with the other party was clearly contrary to the child's best interest. Based on the evidence presented, I ruled that the J.O. and P.O failed to meet the burden. Therefore, I granted the W's petition for the adoption, and dismissed the O's petition.

Following the ruling, the O's filed motions for review of the decision with a D.C. Superior Court Associate Judge. The reviewing judge affirmed my decision. The O.s then appealed.

The District of Columbia Court of Appeals held that I erred in granting the adoption petition by the birth mother's designees because the birth mother was not competent to designate a preferred caregiver under D.C. Code §§ 16-304 (a), (b). The Court held that, given the birth mother's mental health history, she could not make a determination about what was in her child's best interest and plan for her child's future under the termination of parental rights facts as outlined in D.C. Code § 16-2353. In its decision, the Court recognized the issue as a matter of first impression and noted that it had "never stated the standard for competency as it applies to a biological parent's choice of a preferred caregiver." *In re J.O.*, 174 A.3d 870, 871 (D.C. 2017).

2. During your time as a magistrate judge, how many times has an Associate Judge declined to adopt your recommendations?

Response: This process is not used in the Superior Court of the District of Columbia.

However, in certain cases, litigants may file a request to have an Associate Judge review a decision of a Magistrate Judge. *See e.g.*, D.C. Code § 11-1732(k); Superior Court Civil Rule 73; Superior Court Criminal Rule 117; and Superior Court General Rules of Family Court Rule D. Since my appointment as a Magistrate Judge in August 2010, I have presided over thousands of matters, and an Associate Judge has reversed one of my decisions. (Following my decision in the case referenced in Question 1, there was a Motion for an Immediate Stay Upon Appeal, which I denied by written order. The Associate Judge reversed and remanded the matter. On remand, I issued a written order consistent with the reviewing judge's order.)

3. During your time as a magistrate judge, how many times has the D.C. Court of Appeals reversed one of your dispositions? Please provide citations to all such cases.

Response: The D.C. Court of Appeals reversed one of my decisions during my time as a Magistrate Judge. The citation is *In re J.O.*, 174 A.3d 870 (D.C. 2017). It is the same case referenced in Question 1.

4. The First Amendment of the United States Constitution protects the free exercise of religion.

- a. Under Supreme Court and District of Columbia precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The District of Columbia is a “covered entity” under the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.* Under RFRA, a law that substantially burdens the exercise of religion must serve “a compelling governmental interest” and be “the least restrictive means of furthering that compelling governmental interest.” §§ 2000bb–1(a)–(b). *See Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Burwell v. Hobby Lobby Stores Inc.*, 573 U.S. 682 (2014).

Additionally, Supreme Court precedents related to the Free Exercise Clause apply to governmental action by states. Under such precedents, a law that burdens religious practice that is not neutral or not of general applicability is subject to strict scrutiny. *See Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). More recently, the Supreme Court in *Tandon v. Newsom* held that regulations that are not neutral and generally applicable when they treat secular activities more favorably than non-secular activities, and therefore trigger strict scrutiny. 114 S. Ct. 1294 (2021).

- b. Under Supreme Court and District of Columbia precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see response to Question 4(a).

- c. What is the standard in the District of Columbia for evaluating whether a person's religious belief is held sincerely?

Response: In *Smith*, the Supreme Court emphasized that "courts must not presume to determine . . . the plausibility of a religious claim." 494 U.S. 872, 887 (1990). Further, the Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. Of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)); see also *Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682, 724 (2014).

5. What is your understanding of the Supreme Court's holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*, No.20–843 (2022)?

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, No.20–843 (2022), the Supreme Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside of the Second Amendment's 'unqualified command.'" *Konigsberg v. State Bar of Cal.*, 366 U. S. 36, 50, n.10 (1961).

6. Please state whether you agree or disagree with the following statement and explain why: "Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted."

Response: I agree. As the Supreme Court noted the court's "job is to interpret the words [of a statute] consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wisconsin Cent. Ltd. v. United States*, 138 S.Ct. 2067, 2070 (2018) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)).

7. What is your understanding of the holding of *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993)?

Response: In *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), the Supreme Court held that city ordinances related to the ritual killing of animals violated the Free Exercise Clause. Under the Free Exercise Clause, if a law is not neutral or not of general applicability, it must undergo strict scrutiny. It must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. In *Lukumi*, for example, the Court held that the ordinances at issue were not neutral because “The ordinances had as their object the suppression of religion. The pattern we have recited discloses animosity to Santeria adherents and their religious practices; the ordinances by their own terms target this religious exercise; the texts of the ordinances were gerrymandered with care to proscribe religious killings of animals but to exclude almost all secular killings; and the ordinances suppress much more religious conduct than is necessary in order to achieve the legitimate ends asserted in their defense. These ordinances are not neutral, and the court below committed clear error in failing to reach this conclusion.” Because the ordinances at issue were not neutral and generally applicable, they were subject to strict scrutiny, which they could not meet.

8. Have you ever publicly advocated in favor of abortions or pro-choice policy positions? If so, please explain and include relevant citation.

Response: No.

9. Do you believe that America is systemically racist?

Response: I am not aware of consensus as it relates to a definition of systemic racism. I am, however, aware of certain practices that have had a discriminatory impact on different racial groups. However, if I were assigned to a case where there are issues related to claims of racial discrimination, I am bound to apply the precedents set forth by the United States Supreme Court and the District of Columbia Court of Appeals.

10. Have you ever worked on a legal case or representation in which you opposed a party’s religious liberty claim? If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to all such the cases.

Response: No.

11. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: As the Supreme Court explained in *District of Columbia v. Heller*, 554 U.S. 570 (2008), "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool in its constitutional interpretation." *Id.* at 605.

12. Under U.S. Supreme Court present and applicable District of Columbia cases, what is the standard for evaluating an individual's right to refuse a compelled DNA test?

Response: The Supreme Court has found that a compelled DNA test is a "search" within the meaning of the Fourth Amendment to the United States Constitution. Therefore, the standard for evaluating an individual's right to refuse a compelled DNA is whether the government action is "reasonable." *See Maryland v. King*, 569 U.S. 435 (2013).

In *In re G.B.*, 139 A.3d 885 (D.C. 2016), the District of Columbia Court of Appeals adopted the Supreme Court's ruling in *King* when assessing challenges to compelled DNA tests. *Id.* at 897-898.

13. Please provide citations or supply copies of any speeches, articles, or tweets in which you have addressed criminal justice reform.

Response: I have not made any speeches, written any articles, or sent any tweets addressing criminal justice reform.

Opening Statement of Carl Ezekiel Ross
Nominee to be an Associate Judge of the Superior Court of the District of Columbia
July 12, 2022

Good morning Mr. Chairman, Ranking Member and members of the Committee. It is an honor to be before you today, and I want to thank the members of the Committee and the dedicated Committee staff as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank the members of the District of Columbia Judicial Nomination Commission and its Chair, the Honorable Emmet Sullivan, for recommending me to the White House and the President for nominating me. I would like to thank my parents, Gwen Ross who is here today and the late Carl Ross Jr. for teaching me the value of hard work. I would like to thank my siblings, Marsha Ross, who is also here today, and my other siblings who are watching remotely, Della, Cecil, Robby, Brandon and Ryan for keeping me grounded. I would like to thank my in-laws, Pastor Gerold and Wendy LeBlanc for always leading by example, and I would like to thank my family, friends and mentors, including the Honorable James Spencer, the Honorable Hannah Lauck, the Honorable Rhonda Reid-Winston, and the Honorable Rudolph Contreras for their continued guidance and support. I would like to thank the members and staff of the House Ethics Committee including Chairman Ted Deutch and Ranking Member Jackie Walorski for their leadership and for allowing me to work alongside them in the Committee's pursuit of justice. And most importantly, I would like to thank my incredible wife Kimberly, who is also here today, for her unrelenting love and support. I am truly blessed to have her by my side.

I am a proud third-generation Washingtonian from a family of military service, civil servants, clergy, nurses, and social workers. My parents dedicated their professional careers to government service and their retirement years to caring for children in need by serving as foster parents to over one hundred and twenty children, and opening a treatment foster care agency. My parents taught me from an early age the importance of giving back to the community and living by the principle that "to whom much is given, much is required in return." Following in their public service footsteps, I began my legal career clerking for the Honorable James R. Spencer of the Eastern District of Virginia. During my clerkship, I witnessed first-hand the characteristics that make a good judge, such as patience, respect, and impartiality. I went on to work for the law firm of Arnold & Porter, here in Washington, D.C., where I learned to handle large and complex legal matters. For seven years, I served as an Assistant United States Attorney ("AUSA") in the Civil Division of the U.S. Attorney's Office for the District of Columbia. During my tenure as an AUSA, I represented the United States in more than one hundred civil cases in federal district and appellate courts. And for the past five years, I have had the honor of serving as Investigative Counsel for the U.S. House of Representatives Committee on Ethics where I have investigated criminal and civil matters and helped prepare those matters for adjudication by the Committee.

It would be an honor to now use the tools, techniques, and skills that I have developed throughout my career to serve my fellow residents of the District of Columbia as an Associate Judge of the Superior Court of the District of Columbia. If confirmed, I will ensure that all litigants are treated fairly, I will faithfully enforce the rule of law, and I will be steadfast in upholding the Constitution. Thank you again for considering my nomination and I look forward to answering your questions.

REDACTED

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
UNITED STATES SENATE**

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

Carl Ezekiel Ross
Zeke Ross
2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

I am a United States citizen.
3. **Current office address and telephone number.**

United States House of Representatives
Committee on Ethics
1015 Longworth House Office Building
Washington, D.C. 20515
(202) 225-7103
4. **Date and place of birth.**

I was born on December 10, 1977, in Washington, D.C.
5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am married to Kimberly Sabrina LeBlanc-Ross, Senior Lead Counsel at the American Red Cross, 431 18th Street, NW, Washington, D.C. 20006.
6. **Names and ages of children. List occupation and employer's name if appropriate.**

None.
7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

William and Mary School of Law, August 2000 – May 2003. Juris Doctorate received in May of 2003.

Oral Roberts University, August 1995 – May 1999. Bachelor of Arts received in May of 1999.

Largo Senior High School, August 1991 – June 1995. High school diploma received in June of 1995.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

May 2003 – July 2003
Williams Mullen
1021 East Cary Street
Richmond, VA 23219
Summer Associate

August 2000 – May 2003
College of William & Mary School of Law
613 South Henry Street
Williamsburg, VA 23197
Graduate Research Fellow / Research Assistant

July 2002 – August 2002; Summer of 2001; May 2001 – August 2001
Troutman Sanders LLP
1001 Haxall Point
Richmond, VA 23219
Summer Associate

May 2002 – July 2002
Arnold & Porter LLP
601 Massachusetts Ave, NW
Washington, D.C. 20001
Summer Associate

June 2000 – August 2000; Summer of 1999; June 1999 – August 1999
University of Maryland Pre-College Programs
University of Maryland Room 2101 West Education Annex
College Park, MD 20742
Activities Coordinator, Upward Bound

February 2000 – June 2000
Association of Schools of Allied Health Professionals
1730 M Street, NW Suite 500
Washington, D.C. 20036

Director's Assistant

September 1999 – February 2000
 Pat Taylor & Associates
 1101 17th Street, NW, Suite 707
 Washington, D.C. 20036
 Temporary Paralegal

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Performance Award, U.S. Attorney's Office (2015)

Virginia Trial Lawyers Award (2003)

Lawrence W. P'Anson Award (2003)

Regional Champion, ATLA Trial Competition (2002)

Best Brief and Third Best Oralist, National Constitutional Law Moot Court Competition (2002)

Chief Justice, William & Mary Moot Court Board (2002)

Associate Articles Editor, *William & Mary Law Review* (2002)

First-Place Champion, William & Mary Bushrod Moot Court Competition (2001)

Graduate Research Fellowship, William & Mary School of Law (2000)

Academic Scholarship, Oral Roberts University (1995)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

The Barristers, Washington, D.C.
 Member, Executive Board (2019 – present)

William Mary Law School's Alumni Association
 Member, Board of Directors (2018 – present)

Good Children in the Making, Inc.
 President, Board of Directors (2002 – 2008)
 Consultant (Unpaid) (2008 – present)

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

National Bar Association
Member (2004 – 2008)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Barristers in Washington D.C.
Member (2016 – present)

Divine Harvest Ministries
Member (2008 – present)

None of the above listed organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

Virginia State Bar
Member (2003 – present)

United States Court of Appeals for the Fourth Circuit
Member (2004 – present)

District of Columbia Bar
Member (2005 – present)

United States District Court for District of Columbia
Member (2006 – present)

United States Court of Appeals for the District of Columbia
Member (2010 – present)

On October 11, 2006, I was administratively suspended from the Virginia State Bar for failure to pay my bar dues in a timely manner. At the time, I was with Arnold & Porter LLP, and the firm was paying for my Virginia and D.C. bar dues. An administrative mix

up resulted in the check to the Virginia Bar being delayed, and I was administratively suspended on the day of the payment deadline. Upon discovery of the error, the firm sent a check via Federal Express that was received the next day. I submitted the necessary paperwork for re-instatement and on October 23, 2006, I was restored to an active status in good standing. I was similarly administratively suspended from the District of Columbia Bar from October 1, 2010 to October 27, 2010 for submitting my bar dues payment after the deadline and also administratively suspended from October 1, 2017 through November 1, 2017 for submitting my bar dues payment after the deadline. Both incidents occurred when making my first bar dues payment after changing jobs and during time periods where I was not receiving correspondence from the D.C. Bar as a result of address and e-mail changes associated with new jobs. Otherwise, there have been no lapses in membership.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

I have not published any writings.

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

I have not given any speeches in the past five (5) years.

16. **Legal career.**

- A. **Describe chronologically your law practice and experience after graduation from law school, including:**

- (1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I served as a law clerk from August 2003 through August 2004 to the Honorable James R. Spencer who served on the United States District Court for the Eastern District of Virginia.

- (2) **Whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

- (3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

2004 – 2009
 Arnold & Porter LLP
 601 Massachusetts Ave, NW
 Washington, D.C. 20001
 Litigation Associate

2009 – 2017
United States Attorneys' Office, Civil Division
555 4th Street, NW
Washington, D.C. 20530
Assistant United States Attorney

2017 – present
U.S. House of Representatives Committee on Ethics
1015 Longworth House Office Building
Washington, D.C. 20515
Senior Investigative Counsel

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

I served as a law clerk to the Honorable James R. Spencer of the United States District Court for the Eastern District of Virginia from August 2003 through August 2004. During my clerkship, I helped manage a docket of over one hundred and fifty criminal and civil cases. During that time, I researched, analyzed, drafted bench memoranda and drafted opinions in matters involving contract disputes, trademark, trade dress, patents, ERISA, immigration, constitutional claims, social security claims, employment discrimination, environmental matters, as well as numerous criminal matters.

Following my clerkship, I worked as a litigation associate with Arnold & Porter, LLP from 2004 through 2009. In that role, I practiced civil litigation primarily defending large pharmaceutical companies. I also handled several matters pro bono including two political asylum cases, a matter involving funding for a pre-school program in the city of Atlanta, Georgia, and an appellate matter involving first amendment rights. While I worked at Arnold & Porter, LLP, I volunteered for a six-month rotation with the Legal Aid Society of D.C.

From 2009 to 2017, I was an Assistant United States Attorney within the Civil Division at the United States Attorneys' Office in Washington D.C. In that capacity, I represented the United States in a variety of civil matters including employment discrimination, Freedom of Information Act matters, matters involving fraud under the False Claims Act, medical malpractice and other tort matters under the Federal Tort Claims Act, patent cases, and a variety of other civil litigation. I served as lead counsel in one probate related matter in D.C. Superior Court that involved a large gift to the Smithsonian Institute, but the overwhelming majority of my matters were before the United States District Court for the District of Columbia and the United States Court of Appeals for the D.C. Circuit.

I am currently Senior Counsel for the U.S. House of Representatives Committee on Ethics. In my role as Senior Counsel, I manage legal matters from the start of an

investigation through adjudication. My role differs from traditional litigation because I am not advocating for a particular position or client, but gathering evidence, interviewing and deposing witnesses, and drafting memos and Committee Reports that provide legal and factual analysis for the purpose of adjudication. I handle matters raising alleged violations of criminal law, civil law and Congressional rules and regulations. I also present my legal analysis during Committee hearings which are often times similar to an appellate hearing before a ten-member appellate court.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

At Arnold & Porter, my clients included large corporations, the indigent population of D.C. while rotating with the Legal Aid Society, individuals seeking political asylum, and a pre-school program.

While at the U.S. Attorney's Office, my client was the United States of America. My matters were exclusively civil in nature and I handled a variety of matters including employment discrimination, medical malpractice, challenges to the Administrative Procedures Act, Bivens actions suing government officials in their personal capacity, allegations of civil fraud, patent cases, negligence cases under the Federal Tort Claims Act, Freedom of Information Act cases and a variety of other civil matters.

Finally, as Senior Counsel for the U.S. House of Representatives Committee on Ethics, my client is the Committee itself. My role with the Committee is to manage legal matters from the start of an investigation through adjudication by providing an unbiased factual record and legal analysis for final determination by the Committee. My work with the Committee involves alleged violations of both civil and criminal law including fraud, sexual harassment, alleged disclosure of classified information, impermissible use of campaign and congressional resources and other allegations. Finally, some of the matters have led to dual investigations by the Committee and the Department of Justice and high-profile indictments of sitting Members of Congress.

D. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

I appeared in court occasionally while working as an associate at Arnold & Porter, LLP. Between 2017 and 2009 I appeared in Court regularly while serving as an Assistant United States Attorney. In my current position with the U.S. House of Representatives, I do not appear in Court, but I appear

before the Committee itself regularly.

- (2) **What percentage of these appearances was in:**
- (a) **Federal courts (including Federal courts in D.C.);**
90%
 - (b) **State courts of record (excluding D.C. courts);**
0%
 - (c) **D.C. courts (Superior Court and D.C. Court of Appeals only);**
5%
 - (d) **other courts and administrative bodies.**
5%
- (3) **What percentage of your litigation has been:**
- (a) **civil;**
80%
 - (b) **criminal.**
20%
- (4) **What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**
- I have tried two cases in Federal District Court to verdict; the first was a consolidated case with two plaintiffs *Ascom Hasler / Neopost Inc. v. United States Postal Service*, 00-cv-1401, 00-cv-2089 and the second was *Connor v. United States* 13-cv-1877. I also handled a political asylum merits hearing which was tried to verdict.
- (5) **What percentage of these trials was to**
- (a) **a jury;**

0%

(b) the court (include cases decided on motion but tabulate them separately).

100%

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1. *Aqualliance v. U.S. Bureau of Reclamation*, 15-5325 (D.C. Cir.)

Aqualliance was a Freedom of Information Act case that was fully briefed on summary judgment in U.S. District Court before Judge Ketanji B. Jackson. I represented the United States Bureau of Reclamation from approximately June 2014 through March 2016. Judge Jackson granted the government's motion for summary judgment and the matter was appealed, fully briefed, and argued before the D.C. Circuit, judges Brown, Millett and Wilkins. In *Aqualliance*, the plaintiff sought documents from the United States Bureau of Reclamation regarding water well locations, depths, construction and other water rights information in California. The documents, however, were voluntarily submitted as part of water transfers in California and the U.S. Bureau of Reclamation sought to protect particular documents from disclosure. *Aqualliance* was a significant case because it raised issues of first impression before the U.S. District Court for the District of Columbia and the D.C. Circuit regarding application of the Freedom of Information Act's Exemption 9. *Aqualliance* also included an exercise in statutory interpretation and led to established precedent in the jurisdiction.

I served as the sole counsel on the matter during the District Court proceedings and lead counsel before the D.C. Circuit. I drafted the briefs in the District Court and the D.C. Circuit and handled oral argument before the D.C. Circuit. On May 9, 2017, the D.C. Circuit affirmed the District Court's decision and ruled in favor of the government.

Supervising Attorney:

Daniel Van Horn
Civil Chief
U.S. Attorneys' Office for the District of Columbia
555 4th Street NW
Washington, D.C. 20530
(703) 807-5575

Counsel for Plaintiff Aqualliance:

Matt Kenna
Public Interest Environmental Law Firm
679 E. 2nd Avenue, Suite 11B
Durango, CO 81301
(970) 749-9149

2. *Ascom Hasler Mailing Systems Inc. / Neopost Inc. v. U.S. Postal Service*, 00-cv-1401, 00-cv-2089 (D.D.C.)

In *Ascom Hasler*, I represented the United States Postal Service from approximately October 2009 through December 2012. In *Ascom Hasler*, the Court considered a consolidated matter where two plaintiffs sued the U.S. Postal Service based on alleged contract negotiations spanning decades. In *Ascom*, plaintiffs alleged that they spent millions of dollars developing technology and entering into the postage meter market. Plaintiffs alleged that when the U.S. Postal Service changed its regulations in 1995, it eliminated interest income relied upon by the plaintiffs and promised as an inducement to enter the postage meter market. The plaintiffs filed claims for alleged breach of express and implied contract, an alleged Fifth Amendment taking, unjust enrichment, and promissory estoppel. The plaintiffs initially sought damages in excess of \$90 million dollars but reduced their demand to approximately \$74 million dollars after their damage's expert was challenged during trial. The matter was tried to a verdict before Judge Paul Friedman and Judge Friedman ruled in favor of the U.S. Postal Service. The matter was both significant and challenging because it involved evidence, documents, and witnesses dating back to the 1970s, many of which was no longer available, complex legal arguments and significant potential liability.

I served as associate trial counsel in the matter. During trial, I handled opening statement, a significant number of the witnesses, and the majority of the post-trial briefing.

Co-Counsel:

Darrell Valdez
Assistant United States Attorney
U.S. Attorneys' Office for the District of Columbia
555 4th Street NW
Washington, D.C. 20530
(202) 252-2500

Counsel for Plaintiffs Ascom Hasler and Neopost:

Benjamin Boyd
Sara Moghadam
DLA Piper LLP
500 Eighth Street, NW
Washington D.C. 20004
(202) 799-4502

3. *Connor v. United States*, 13-cv-1877 (D.D.C.)

In *Connor*, the plaintiff, Kevin Connor sued the United States when a U.S. Postal Service truck ran into the ambulance he was traveling in. I served as counsel on behalf of the United States from approximately April 2015 through May 2016. Mr. Connor was a paramedic with the D.C. Government and was on duty traveling to an emergency at the time of the accident. Mr. Connor alleged that the accident was the result of a postal worker's negligence and that the accident resulted in permanent injuries. Mr. Connor sought \$2,000,000 in damages. The matter was tried to a verdict before Judge Tanya S. Chutkan. I served as associate counsel during trial, and I handled the opening statement, approximately half of the lay and expert witnesses, closing arguments, and I drafted a significant portion of the post-trial briefing for the matter. Judge Chutkan issued a verdict in favor of the United States.

The *Connor* matter was significant because it involved complex medical issues including degenerative conditions and issues of causation. The matter also included questions of negligence and contributory negligence based on multiple, at times competing, provisions of the D.C. Code.

Co-Counsel:

Heather Graham Oliver
Deputy Chief – Civil Division
U.S. Attorneys' Office for the District of Columbia
555 4th Street NW
Washington, D.C. 20530
(202) 252-2500

Counsel for Plaintiff:

William Lightfoot
May Lightfoot PLLC
3200 Martin Luther King, Ave, SE, 3rd Floor
Washington, D.C. 20032
(202) 431-3888

4. *Pirotty v. Broadcasting Board of Governors*, 11-5292 (D.C. Cir.)

In *Pirotty*, the Plaintiff, Mr. Salah Pirotty sued the Broadcasting Board of Governors alleging gender, national origin, and age discrimination in the decision to hire two individuals for an International Broadcaster position with Voice of America's Kurdish Service. The matter was significant because it involved extensive discovery, complex questions regarding employment law and the interplay of cultural sensitives, and the matter went all the way to the D.C. Circuit. Judge Richard J. Leon presided over the matter in the U.S. District Court for the District of Columbia and on September 30, 2011, Judge Leon granted the Government's Motion for Summary Judgment. Plaintiff appealed the matter to the D.C. Circuit and on March 7, 2012, Circuit Judges Henderson, Tatel, and Brown affirmed

the District Court's decision and ruled in favor of the Broadcasting Board of Governors.

I represented the Broadcasting Board of Governors from approximately October 2009 through May 2012 and was the sole counsel during the District Court proceedings and the lead counsel responsible for drafting motions, briefs, and presenting oral argument before the D.C. Circuit.

Supervising Attorney:

Daniel Van Horn
Civil Chief
U.S. Attorneys' Office for the District of Columbia
555 4th Street NW
Washington, D.C. 20530
(703) 807-5575

Plaintiff's Counsel:

Leslie D. Alderman, III
Alderman, Devorsetz, & Hora PLLC
1025 Connecticut Ave, NW, Suite 615
Washington, D.C. 20036
(202) 969-8220

5. *In the Matter of Allegations Regarding Representative Ruben Kihuen (2018)*

In the matter of Representative Ruben Kihuen, former Congressman Ruben Kihuen was accused of sexually harassing multiple women. I served as lead counsel on behalf of the U.S. House of Representatives Committee on Ethics throughout 2018 during investigative subcommittee proceedings and when the matter was presented before the full Committee on Ethics for final adjudication. The matter of Representative Kihuen is significant because it involved multiple witnesses who were afraid to participate in the investigation from fear of retaliation, a legal analysis regarding whether sexual harassment jurisprudence extends to unwanted advances outside of the direct employer / employee relationship, and an exercise in using congressional rules to address conduct that fell outside of traditional sexual harassment law. Both the Committee's investigative subcommittee and the full Committee chose to reprove Representative Kihuen, and Representative Kihuen chose not to run for re-election to Congress.

Co-Counsel:

Katherine L. Dacey
Goodwin Procter
100 Northern Avenue
Boston, MA 02210
(617) 570-1060

Counsel for Representative Kihuen:

Joe Sandler

Sandler Reiff
 1090 Vermont Ave, NW
 Washington, D.C. 20005
 (202) 479-1111

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

I settled the following five matters shortly before trial was scheduled to commence. *Bell et al. v. Donley*, 09-cv-843 (D.D.C.). In *Bell*, I served as associate counsel and the matter settled on the first day of trial shortly before the start of jury selection. In *Bright v. F.C.C.*, 8-cv-755;10-cv-397 (D.D.C.), I was lead counsel, and the matter settled a few weeks before the jury trial was set to commence. In *Lenkiewicz v. Donovan*, 13-cv-261 (D.D.C.), I was lead counsel and the matter settled a few days before the jury trial was set to commence. In *Ritchie v. Napolitano*, 13-cv-953 (D.D.C.), I was lead counsel and the matter settled a few months before the jury trial was set to commence. In *Norman v. Vilsack*, 12-cv-730 (D.D.C.), I was associate counsel and the matter settled approximately one month before the jury trial was set to commence.

I settled approximately twenty-six additional cases during discovery and/or before the Court resolved the matter based on dispositive motions. In each of these matters I served as the sole counsel on the matter.

Finally, I settled one matter, *Anderson, et al. v. U.S. Dep't of Education*, 06-cv-1565 (D.D.C.), while the matter was on interlocutory appeal to the D.C. Circuit. I was associate counsel in that matter.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I have never held judicial office.

- A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

I have never been a candidate for elective, judicial, or any other public office.

21. Political activities and affiliations.

A. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

I have not held any public offices.

B. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

I have not had any memberships, held any offices, or rendered any services to any political party or election committee in the last ten years.

C. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

I have not made any political contributions in the past five years.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No, to my knowledge, I have never been investigated, and I have never been arrested, charged, or convicted by any law enforcement authorities for violations of any federal, State, county, or municipal law other than a minor traffic offense.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No. I, nor any business of which I was an officer, director or owner have never been a party or otherwise involved as a party in any legal or administrative proceeding.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No. I have never been disciplined or cited for a breach of ethics for unprofessional

conduct, nor have I been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group.

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

Yes. I will sever all connections with my present employer, and any business firms, associations, and organizations if I am confirmed.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

I have no financial arrangements, deferred compensation agreements, or continuing dealings with any law firm, business association or clients.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

I have no investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest if I am confirmed.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

I have had no business relationships, dealings, or financial transactions in the last ten years, neither for myself, nor on behalf of a client or as an agent, that could in any way constitute or result in a possible conflict of interest.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

I have had no activity in which I have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than my work as non-partisan counsel for the U.S. House of Representatives Committee on Ethics where I worked on conflict of interest regulations for the House of Representatives.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

I have no plans, commitments, or agreements to pursue outside employment during my service as a judge.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

I have no potential conflicts of interest that I need to resolve. If a conflict arises, I will turn to the District of Columbia Code of Judicial Conduct, the Code of Conduct for United States Judges, and any other applicable sources to resolve the conflict of interest.

8. **If confirmed, do you expect to serve out your full term?**

Yes, I expect to serve out my full term.

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11 - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**
Yes.
2. **Are you a member of the bar of the District of Columbia?**
Yes.
3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**
Yes, I have been a member of the District of Columbia bar since May 6, 2005.
4. **If the answer to Question 3 is "no" --**
 - A. Are you a professor of law in a law school in the District of Columbia?
 - B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
 - C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
 - D. Upon what grounds is that eligibility based?
5. **Are you a bona fide resident of the District of Columbia?**
I became a bona fide resident of the District of Columbia approximately October 1, 2004. I moved back to the District of Columbia after finishing my judicial clerkship and have lived in the District of Columbia continuously since that date.
6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**
Yes.
REDACTED
7. **Are you a member of the District of Columbia Commission on Judicial Disabilities**

and Tenure or the District of Columbia Judicial Nominating Commission?

No, I am not a member of the District of Columbia Commission on Judicial Disabilities and Tenure, nor am I a member of the District of Columbia Judicial Nominating Commission.

8. Have you been a member of either of these Commissions within the last 12 months?

No, I have not been a member of either of those Commissions within the last 12 months.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

I have provided four (4) copies of my District of Columbia Judicial Nomination commission questionnaire.

AFFIDAVIT

Carl Ezekiel Ross being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Carl Ezekiel Ross

SUBSCRIBED and SWORN TO before me this 24th day of May 2022.

Angela Taylor
Notary Public



ANGELA TAYLOR
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2023

**Senator Lankford
Post-Hearing Questions for the Record
Submitted to Carl Ezekiel Ross**

**Nominations of Errol R. Arthur, Kendra D. Briggs, and Carl Ezekiel Ross to be Associate
Judges, Superior Court of the District of Columbia
Tuesday, July 12, 2022**

On Judicial Philosophy:

1) How would you describe your judicial philosophy?

Response: If confirmed, my judicial philosophy would be to ensure that all litigants that appear before the court are treated equally, that I do not pre-judge matters or the individuals who appear before the court, and that I am impartial and objective in applying the law to the facts that are before the court.

2) If you are presented with a case, and the law clearly indicates that you should reach a particular result, but you conclude that result would be profoundly unjust. What do you do?

Response: Judges are required to put personal opinions aside and apply the law objectively to the facts of the case before them. If confirmed, I would be steadfast in fulfilling my obligation to objectively apply the law to the facts of every case regardless of whether I agree with the results.

3) Should judges take changing social values into consideration when interpreting the law?

Response: No, judges should not take changing social values into consideration when interpreting the law. The Supreme Court has explained what judges should take into consideration when interpreting the law, *see, e.g., U.S. v. Ron Pair Enterprises*, 489 U.S. 235 (1989), and “changing social values” is not one of the factors.

4) What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: The Supreme Court has explained that when engaging in statutory interpretation, a court need look no further than the text of a statute if the statute is unambiguous. *See Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is

complete.”) (internal citations omitted); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 388 (1951) (explaining that courts “are to take the words of the statute in their normal and customary meaning.”). If the text of the statute is ambiguous, and there is no binding precedent, then the court may look to other canons of statutory interpretation, and as a last resort the type of legislative history that the Supreme Court has endorsed. Other extrinsic factors such as general principles of justice play no role in statutory interpretation.

5) What Judge or Justice do you most admire? Why?

Response: I admire the judge that I clerked for, the Honorable James R. Spencer, of the United States District Court for the Eastern District of Virginia. Judge Spencer was patient, impartial, objective in applying the law to the facts, and efficient in moving a very large court docket.

6) If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No. Judges must be objective in applying the law to the facts of the case before the court and consistent in applying the sentencing factors recognized by the Supreme Court, the D.C. Court of Appeals, and the D.C. Code in sentencing individual defendants convicted of criminal conduct. Extrinsic factors, such as the disparate impact that particular crimes may have on minority groups, play no role in the sentences rendered by individual judges and are properly addressed by legislators.

On Criminal Law:

1) What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area?

Response: Judges are limited in their authority and can only address the cases that come before them. Judges can, however, work to address the backlog of cases in D.C. to ensure that justice is not delayed for the victims of criminal conduct.

2) What do you consider one of the most critical areas that you can serve D.C. while you're on the bench?

Response: If confirmed, I can serve D.C. in a critical way by ensuring that all litigants that appear before the court are treated fairly, that the law is applied to the facts of each case objectively, and that the court's docket is moving efficiently and rendering timely justice.

On Evictions in DC:

1) At the outset of the pandemic, Congress included eviction protection in the CARES

Act. When those protections expired, the CDC issued an eviction moratorium which took effect on September 4, 2020. That rule was challenged and reached the Supreme Court. On June 29, 2021 the Court left the moratorium in place, but noted that “congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31.” Despite the Supreme Court’s warning, President Biden attempted to extend the moratorium. On August 26, 2021, the Supreme Court vacated the moratorium because it exceeded CDC’s statutory authority. The District of Columbia provided eviction protection beyond that provided by the CDC – in March 2022 the City Council banned evictions over unpaid rent less than \$600.

A. How will you balance the rights of landlords who have not received rent with the interests of tenants who seek a safe place to live?

Response: Each civil case that comes before the court involves the balancing of rights and interests of parties seeking differing forms of relief from the court. If confirmed, I will be objective in applying the law to the facts of each case, including landlord tenant cases, that come before the court.

b. Will you apply the law to the facts, or will other consideration influence your decision making?

Response: If confirmed, I will objectively apply the law to the facts in each case that comes before the court. No other factors will play a role in my decision making.

On Religious freedom:

1) Religious Freedom Restoration Act (RFRA) states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector.

Would you agree that by denying churches the ability to hold an in-person church service, the city of Washington, D.C. violated RFRA?

Response: RFRA protects religious liberty by requiring the government to show any regulations infringing upon that liberty “is in furtherance of a compelling governmental interest,” and is utilizing “the least restrictive means” in furthering that interest. 42 U.S.C. §§ 2000bb *et seq.* Furthermore, the Supreme Court has granted injunctive relief to prevent the enforcement of regulations that treat “some comparable secular activities more favorably than at home religious exercise” with respect to gatherings. *See Tandon*

v. Newsom, 593 U.S. ___ (2021) (applying the Free Exercise Clause and strict scrutiny, not RFRA, to California’s COVID restrictions on religious exercise); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___ (2020) (granting injunctive relief, based on the Free Exercise Clause, from ordinances limiting capacity in houses of worship “[b]ecause the challenged restrictions are not ‘neutral’ and of ‘general applicability,’” and fail to satisfy strict scrutiny).

If confirmed and faced with a case raising such a question, I would apply RFRA and the Supreme Court and D.C. Court of Appeals precedent on the issue. *See, e.g., Tandon v. Newsom*, 593 U.S. ___ (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___ (2020); *Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682 (2014).

- 2) **The Mayor has a vaccine mandate in place for all city employees (including a required booster whenever eligible to receive one). If a case came before you where an employee was required to be vaccinated under the Mayor’s order but doing so would violate their sincerely held religious belief and that employee requested and was denied a reasonable accommodation, how would you approach such a case? What steps would you take in determining whether the employee should be granted an accommodation from the mandate?**

Response: It would be inappropriate for the court to evaluate whether a person asserting religious liberty has sincerely held religious beliefs. *See Employment Division v. Smith*, 494 U.S. 872, 887 (1990) (“Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.”); *Hernandez v. Commissioner of Internal Revenue*, 490 U.S. 680, 699 (1989) (“It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretation of those creeds.”).

Accordingly, if confirmed and faced with a case raising such a question, I would apply RFRA to determine if the failure to accommodate “is in furtherance of a compelling governmental interest,” and is utilizing “the least restrictive means” in furthering that interest. 42 U.S.C. §§ 2000bb *et seq.* While “Congress enacted RFRA in order to provide greater protection for religious exercise than is available under the First Amendment,” *Holt v. Hobbs*, 574 U.S. 352, 357 (2015), I would also apply the First Amendment Free Exercise Clause. I would ultimately apply RFRA and the Supreme Court and D.C. Court of Appeals precedent on the issue. *See, e.g., Tandon v. Newsom* 593 U.S. ___ (2021); *Espinoza v. Montana Department of Revenue*, 591 U.S. ___ (2020); *Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682 (2014), *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

Post-Hearing Questions for the Record
Submitted to Carl Ross
From Senator Josh Hawley

July 13, 2022

1. The First Amendment of the United States Constitution protects the free exercise of religion.

- a. Under Supreme Court and District of Columbia precedent, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

Response: The District of Columbia is a covered entity under the Religious Freedom Restoration Act (“RFRA”) 42 U.S.C. §§ 2000bb *et seq.* Under RFRA, government action “shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability,” unless “it . . . (1) is in furtherance of a compelling governmental interests; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.*; *see, e.g., Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682 (2014), *Tandon v. Newsom*, 593 U.S. (2021); *Espinoza v. Montana Department of Revenue*, 591 U.S. ____ (2020); *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

The Supreme Court has also explained that laws that treat secular activity more favorably than religious exercise are not neutral and generally applicable, *Tandon v. Newsom*, 593 U.S. (2021), and when a law that burdens the free exercise of religion is not neutral then it is subject to strict scrutiny and requires a compelling government interest and it must be narrowly tailored. *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

- b. Under Supreme Court and District of Columbia precedent, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.**

Response: Please see the response to Question 1(a).

c. What is the standard in the District of Columbia for evaluating whether a person's religious belief is held sincerely?

Response: It would be inappropriate for the court to evaluate whether a person asserting religious liberty has sincerely held religious beliefs. In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court explained that “[r]epeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.” *Id.* at 887. Likewise, in *Hernandez v. Commissioner of Internal Revenue*, 490 U.S. 680 (1989), the Supreme Court stated that “[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretation of those creeds.” *Id.* at 699.

2. What is your understanding of the Supreme Court's holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*, No.20–843 (2022)?

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___, (2022), the Supreme Court held that New York's law, requiring applicants to show a special need for self-protection before receiving a license to carry a gun outside of their home, violates the Second Amendment (which is applicable to states through the Fourteenth Amendment) by preventing citizens with ordinary self-defense needs from exercising their constitutional rights. The Supreme Court explained that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation,” and that regulations infringing upon that right must be “consistent with the Nation's historical tradition of firearm regulations.” The Supreme Court held that courts should review (1) “whether modern and historical regulations impose a comparable burden on the right of armed self-defense;” and (2) “whether the regulatory burden is comparably justified” to determine if a regulation is consistent with the Second Amendment.

3. Please state whether you agree or disagree with the following statement and explain why: “Absent binding precedent, judges should interpret statutes based on the meaning of the statutory text, which is that which an ordinary speaker of English would have understood the words to mean, in their context, at the time they were enacted.”

Response: I agree with the statement. The statement is consistent with the U.S. Supreme Court precedent regarding statutory interpretation. See *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 388 (1951) (explaining that courts “are to take the words of the statute in their normal and customary meaning.”).

4. What is your understanding of the holding of *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993)?

Response: In *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993), the Supreme Court held a set of city ordinances governing the ritualistic sacrifice of animals unconstitutional because they did not meet strict scrutiny. The Court explained that “a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” *Id.* at 531 (citing *Employment Div., Dept. of Human Resources of Ore. V. Smith*, 494 U.S. 872 (1990)). The Court further explained that “if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.* at 533 (citing *Smith*, 494 U.S. at 878-79). The Supreme Court went on to hold that the ordinances in question were not neutral and that they failed strict scrutiny because the city did not show a compelling government interest and the ordinances were not narrowly tailored. *Id.* at 546-47.

5. Have you ever publicly advocated in favor of abortions or pro-choice policy positions? If so, please explain and include relevant citations.

Response: No.

6. Do you believe that America is systemically racist?

Response: I am not aware of a legal definition for “systemic racism” that has been recognized by the courts. America has had periods of racism in its past, such as slavery, Jim Crow laws and ordinances, and *Plessy v. Ferguson*, 163 U.S. 537 (1896). However, in its efforts to form a more perfect union, America has created constitutional and legislative frameworks to address racism. *See, e.g.*, 13th Amendment, 14th Amendment, and 15th Amendments to the Constitution. Courts, however, are limited to addressing the cases that are before them, including those that allege racial discrimination, based on the applicable law and the facts presented, and do not have the general ability to address discrimination outside of the cases that come before the court.

7. Have you ever worked on a legal case or representation in which you opposed a party’s religious liberty claim? If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to all such the cases.

Response: No.

8. What role should the original public meaning of the Constitution’s text play in the courts’ interpretation of its provisions?

Response: The Supreme Court has explained that “‘examination of a variety of legal and other sources to determine the public understanding of a legal text in the period after its enactment or ratification’ was a ‘critical tool of constitutional interpretation.’” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___, (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008)).

9. Under U.S. Supreme Court precedent and applicable District of Columbia cases, what is the standard for evaluating an individual’s right to refuse a compelled DNA test?

Response: Both the Supreme Court, *Maryland v. King*, 569 U.S. 435 (2013), and the D.C. Court of Appeals, *In re G.B.*, 139 A.3d 885 (D.C. 2016), have held that a compelled DNA test is a “search” under the Fourth Amendment to the Constitution and must be consistent with the Supreme Court’s and the D.C. Court of Appeals’ Fourth Amendment jurisprudence. Both the Supreme Court and the D.C. Court of Appeals have explained that “the ‘touchstone of the Fourth Amendment is reasonableness.’” *In re G.B.*, 139 A.3d at 897 (quoting *King*). The D.C. Court of Appeals has articulated several factors that a court should consider in determining whether a compelled DNA test is reasonable including, whether the test will extract evidence relevant to the suspect’s guilt, whether the test is being performed in a reasonable manner, and the seriousness of the crime in question. *See id.*

10. Please provide citations or supply copies of any speeches, articles, or tweets in which you have addressed criminal justice reform.

Response: I have no speeches, articles, or tweets in which I have addressed criminal justice reform.